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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: ONTARIO BOARD OF CENSORS

THURSDAY, JANUARY 7, 1982

Morning sitting





STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)  
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)  
Breaugh, M. J. (Oshawa NDP)  
Charlton, B. A. (Hamilton Mountain NDP)  
Edighoffer, H. A. (Perth L)  
Epp, H. A. (Waterloo North L)  
Hodgson, W. (York North PC)  
Mancini, R. (Essex South L)  
McLean, A. K. (Simcoe East PC)  
Robinson, A. M. (Scarborough-Ellesmere PC)  
Taylor, G. W. (Simcoe Centre PC)  
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Research Officer: Eichmanis, J.

Witnesses:

Emilio, R., President, Association of Independent and  
Canadian-Owned Motion Picture Distributors  
Lightstone, R., President, Paramount Pictures, Canada;  
Vice-President, Canadian Motion Picture Distributors  
Association  
Posen, C., President, Motion Picture Theatres Association of  
Ontario  
Roth, M., Executive Director, Canadian Motion Picture Distributors  
Association





LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, January 7, 1982

The committee met at 10:15 a.m. in room No. 228.

AGENCY REVIEW: ONTARIO BOARD OF CENSORS

Mr. Chairman: Gentlemen, we have a quorum.

The first witness we have is Curly Posen, president of the Motion Picture Theatres Association of Ontario. Mr. Posen, would you like to come up to the table?

Mr. Posen, the standing committee on procedural affairs reviews the activities of various boards, agencies and commissions. This week, we are reviewing the activities of the Ontario Board of Censors. We want to hear from people like yourself who are involved in the motion picture industry about what your relationship may be with the board and what you think of the operation of the board of censors.

If you have any suggestions, complaints or compliments, we would like to hear them, as well as your opinion as to censorship generally in Ontario, how you feel about it, and if you have any recommendations or advice to us, we would like to hear about it.

Mr. Posen: Mr. Chairman, since Mary Brown took over we haven't had any problems with the censor board. We have had a few problems with the categories between restricted and adult entertainment. We finally got together and we now have a fourth classification. We did not like the wording of it but Mr. Gordon Walker wanted it set up this way because that is the way they had talked about it, so we are getting to live with it and the people are getting accustomed to the four classifications now.

Some of the warnings we were not happy with. We had a meeting with Mary Brown on the warnings we had to put on the films. Outside of that, we have had no problems. What's his name came in and then we had Mary Brown, who is working pretty good. She is working with our associations in the theatre movie industry very well.

Some of our members aren't happy, but one always has that with 300-odd members. With that number, there will always be some complaints. On the whole, we are quite happy. We have no complaints about the way things are going right now.

Mr. Chairman: You indicate you are happy with the new classification method, are you?

Mr. Posen: Yes.

Mr. Chairman: And you have no objection to the idea of placing warnings with respect to certain types of movies.

Mr. Posen: No, but we had arguments about the wording of the warnings and we have straightened that all out in the last three months with the classifications to get the Ontario customers



accustomed to what they mean. They are now pretty well getting used to it.

Mr. Chairman: What about advertising? Do you have any problems with that as far as the censor board is concerned?

Mr. Posen: No, we haven't lately. We have not had any. Of course, our advertising is made up with the distributors and the ads are okayed before we get them. So we do not have too much of a problem with them.

Mr. Chairman: Any questions?

Mr. Robinson: Sir, we are very pleased to have your comment that you are basically happy with the way the board is operating and also your very high praise of Mrs. Brown's efforts on behalf of the government of Ontario. We are interested to know where there may be problems. I think you can appreciate my question. You commented that perhaps some of your members may have some areas of complaint. Could you share with us what those areas are?

Mr. Posen: Two or three of our members think they shouldn't make any cuts to the films. We as owners feel if they want to make cuts it is to our benefit and the public's, because you get complaints in the theatres.

10:20 a.m.

In one theatre we had The Amityville Horror playing and in another theatre we had a Disney film. A woman brought in her child, and was standing at the box office on a Saturday night, when we were very busy, arguing with him. He wanted to see Amityville Horror and she wanted him to see Disney. They were arguing there and nobody could sell tickets, so finally I went up to her and said, "Can I help you?" and she said: "Well, he wants to see Amityville Horror and I don't think it's for him, and I want him to see the Disney. What do you think?" I said, "I saw Amityville Horror; it's a little horror, it is nothing that he can't see. My grandchildren were in to see it." So she said, "Okay," and went in.

I was sitting in the lobby and about 20 minutes later the kid comes out and goes to the washroom and he comes out and then he goes back into the washroom; he didn't go back into the theatre. After about five minutes I said to him: "What's the matter? Are you having problems?" He said, "No, I don't like the picture." I said, "Well, what about your mother?" He said, "I can't get her out, she likes it." I said to him, "Do you want to go and see the Disney in the meantime and if your mother comes out first I will tell her where you are?" He said, "That's fine." So he went in and saw the Disney and his mother stayed and watched the horror.

Mr. Robinson: So what you're saying is that two or three of some 365 of your members may have some complaint, not with the procedure or the operation but simply with its objective question, whether there should be any censorship or not.

Mr. Posen: That's right.



Mr. Breaugh: You really wouldn't have, I wouldn't think, much concern about the content of the movies, would you? Basically, your operation is to show whatever is available and everybody who is in competition with you can show the same film so, at least, from your point of view no matter what happens to the picture itself everybody else in the same business gets the same pictures to show, so it doesn't really make any difference to you, does it?

Mr. Posen: No, it doesn't. The only thing is that pictures are made for every type of person. Everybody has his own ideas of what he wants to see in a picture. All we are interested in is business. We are businessmen, and we are interested in what is making money and what is not making money.

Mr. Breaugh: That seems to me to be a fairly reasonable approach for a businessman.

Mr. Posen: I am personally against a lot of restrictions on obscenity. I am an old burlesque man. I used to be in burlesque. Some of you will remember when restricted pictures first came out and the people came in to see it, when you walked in and the picture was on, you would see a woman come into the bedroom and get undressed and with her slip on and next thing you saw her with the covers up to her neck. The man would come in and he would take his shirt off and close the door and then pull the blinds down--

Mr. Chairman: Could we close that door and put a restricted sign outside this room? Carry on.

Mr. Posen: ---and the next thing you would see was that he had his pants on and he would pull the blind up. For as long as that was going on, the people were coming to the theatre to see if he would forget to close the door or pull the blind down. It is the same with burlesque. As long as the strippers weren't taking everything off, the guys who were supposed to be in college were coming and sitting in the front row at the Casino.

They used to come as long as the girls had the brassieres and panties on, hoping that one of these days they would drop it or by mistake it would fall off. They kept coming back, but as soon they started to show everything our business was gone. There is no more burlesque. It's the same thing with the pornography and the sex films: they don't come. A good sex film that has a good story will do business, but if it is just an ordinary sex picture it doesn't mean a thing.

Mr. Chairman: It's got to be artistic.

Mr. Posen: Or have a good story to it.

Mr. Epp: Mr. Posen, when people go to see a movie and walk out after five or 10 minutes or maybe even half hour because of the type of film that they are seeing, is there any rebate there? Do they get any money back?

Mr. Posen: No. Once you have paid your money, that's it.

Mr. Hodgson: You pay your money and you take your chances.

Mr. Epp: I wondered if they had a policy on it.

Mr. Posen: You know what you are going to see before you walk in. You may not like the production of the film and walk out. There are lots of people who complain that they didn't like the production, but we don't stand there with a hook bringing them in. They walk in of their own accord.

Mr. Breaugh: There are a couple of theatre operations which are going a bit beyond the traditional showing of movies. We have a place in town, and I know there are a couple here, that show a thing called the Rocky Horror Picture Show, which is more than just a movie. It is kind of a little difficult to describe, but whatever it is, it is more than just going impassively watching a movie. How does the censor board deal with that? I take it they have no objections to it because it seems to be a continuing feature.

Mr. Posen: Actually there is nothing wrong with it except you get these kooky kids. They come dressed up with the make-up and when there is singing on the screen they are singing in the theatre with them, and it is the same kids going wherever the picture is showing. As a matter of fact, they took it away from restricted and now it is actually adult accompaniment and it hasn't hurt. The same people are coming wherever it is showing. It has been going for years and you get that cult of teenagers, just like rock music and punk music and all this. That is who you are getting to these things. You are not getting families.

Mr. Breaugh: I haven't noticed any controversy from the censor board about that.

Mr. Posen: Some of the theatres stopped playing it because they were throwing things at the screen and they were acting up in the theatre. You see them come in dressed up as some of the actors on the screen and hear them singing with the film. It is just one of those cult things with a lot of kids.

Mr. Breaugh: It does seem strange to me that a theatres branch which controls everything from how you place the signs and the number of urinals has nothing to say at all about this particular phenomenon, which is certainly a change--at the very least you can say it is a change--from the traditional role of paying whatever it is at the door and then sitting and watching.

Mr. Posen: If the censor board wants to make cuts, fine. If it wasn't doing any business, nobody would play it. It is only at certain theatres you see them playing the Rocky Horror Picture Show and the other one that goes with it. You see them playing it on midnight shows, on Saturday nights and stuff like that. The Willow had problems with it. They started breaking up the theatre because they were acting, coming in all doped up and acting. That's the theatre's fault. If they want to show it that's fine. It is not the censor board. If there is nothing in the picture to stop why should they stop it?



Mr. Breaugh: I am just kind of surprised that the censor board hasn't got a regulation on the number of garter belts that young gentlemen can wear to that picture.

Mr. Posen: Well some of them want to wear garter belts and some fellows wear girdles. This is a fact. We are not going to tell them what to wear or how to dress.

Mr. Breaugh: That regulation will be forthcoming. George is writing it up now.

Mr. Chairman: I have only one question. You mentioned, Mr. Posen, that you were in burlesque. Were you a dancer?

Mr. Posen: Not a stripper. We never had male strippers in those days. I was doing production and I was in the music and I was setting up shows and in charge of getting the chorus girls and the strippers because I worked with them all in the United States years ago with Red Skelton, the Three Stooges and Gypsy Rose Lee and all of them. I started in burlesque here in 1936 in Toronto at the old Casino Theatre and everything was fine right across the country. But even in the United States today you don't see anything like that. All they have got is all strippers. We had the finest comedians in these shows.

Mr. McLean: Mr. Chairman, I was just wondering. Is your first name, Curly, a nickname?

Mr. Posen: No. It is my regular name. It's on my life insurance, my old age pension, everything.

Mr. McLean: I was just curious how you would get that name.

Mr. Posen: I guess I came pretty curly.

Mr. Chairman: You got it years ago.

Mr. Posen: I had it years ago. As soon as I got married, I lost it.

Mr. Chairman: Thanks very much, Mr. Posen. We appreciate your attending this morning.

We have Mr. Lightstone here, gentlemen, rather than George Heiber, from the Canadian Motion Picture Distributors Association. Mr. Lightstone is also president of Paramount Pictures Canada. With him is Mr. Roth, who is a director of the Canadian Motion Picture Distributors Association. Would you gentlemen like to come forward?

10:30 a.m.

I don't know if you were here, gentlemen, when I explained to Mr. Posen that, as you probably know, we are the standing committee on procedural affairs, and one of our responsibilities is to look into various agencies, boards and commissions and their activities and operations.

This week we are looking at the Ontario Board of Censors. We would just like to have some idea of your opinion of the board, your opinion of censorship generally and your relationship with the board and its personnel and generally how you feel the operation is going--your operation and the industry as far as the rather controversial question of censorship is concerned.

Mr. Lightstone: I think Mr. Roth will just read a short position here, and then we could answer your questions after.

Mr. Roth: Mr. Chairman, ladies and gentlemen of the committee, as your chairman has indicated, Mr. Lightstone is the vice-president of our association, as well as president of Paramount Pictures Canada. I am the executive director of the association. Both of us are pleased to join with you this morning. We thank you for the invitation to comment on our association's relationship with the Ontario censor board, but I must say I do not know that we are going to provide the same level of entertainment as our good friend, Mr. Posen.

Mr. Lightstone: He is a tough act to follow.

Mr. Roth: The Canadian Motion Picture Distributors Association, otherwise known as the CMPDA, is the senior trade association of theatrical film distributors in Canada. We have eight members and, for your information, I will take the time to list them: Astro Films, Columbia Pictures of Canada, Paramount Pictures Corporation Canada Limited, MGM Canada, Twentieth Century Fox Film, United Artists Film Corporation, Universal Films Canada, Warner Brothers Distributing.

The association has had a long and generally positive relationship with the theatres branch and the Ontario censor board from its days as part of the Ministry of Industry and Tourism to the present time under the jurisdiction of the Ministry of Consumer and Commercial Relations.

During the past three and a half years we have maintained a very active dialogue with the ministry and have documented for them a variety of proposals, many of which we are pleased to advise you have been incorporated in the very recent changes in both the structure and the operation of the Ontario censor board. Among these changes we would include the introduction of a fourth category, a change in the make-up of the board, an increased use of captions or information pieces, along with an increase in emphasis on the board's role to inform the public to the greatest degree possible as to the type and content of a particular motion picture.

There is no question that from time to time our member companies, as well as other film distributors, will experience difficulties with the board on a particular picture. These situations have existed in the past, and we are sure that given the energies, the imagination and the creativity of film makers, they will continue in the future. In our view, the act cannot be devised so as to routinely deal with these situations. They must be resolved on the basis of content of a particular film, the objectives of the film distribution company involved and, of course, the particular findings of the board.



On a positive note, we would like to take this opportunity to underline our very sincere feeling that the relationship that the industry has with the board has been enhanced by both the commitment and the capability of Mrs. Brown and her staff. Albeit the act has been changed so as to permit them to take, at least in our view, a more contemporary view of pictures, there certainly is a very strong willingness to work with the industry and provide a necessary level of support and co-operation from the theatres branch in general and the censor board specifically. We view this as a welcome change from the recent past, and we have every reason to believe that relationship will continue and strengthen in years to come.

We have one main and primary concern, and that is the growth of video cassette distribution. We know the board shares our concern in this area, and I think you may have heard from Mr. Posen on this question. We have undertaken an aggressive educational program, with the support of other associations such as the Ontario Hotel and Motel Association, and it is our intention to continue this process by way of direct contact with these groups, as well as by way of advertising programs and appropriate periodicals.

The basic problem is that the sale or rental of video cassettes at the retail level is clearly for home use only. Any form of commercial or quasi-commercial use of video cassettes is a clear case of copyright infringement in addition to the very real financial harm caused to both exhibitor and distributor.

The fact that these installations endeavour to legitimize their operation by having both the cassette player and the cassette licensed by the Ontario censor board does not mitigate either the infringement nor the financial damage. We feel that the ministry and the board are incorrect in their efforts to accommodate this form of exhibition and we have proposed that they not accept for classification any such material unless it is submitted by the duly authorized 35-millimetre distributor or his agent. We suggest to you that such a policy decision would go a long way to alleviate many of the problems that are inherent in this area. And, in fact, we have achieved that level of co-operation from a number of other provinces who are experiencing the same type of difficulty.

Aside from this one concern, which certainly is growing, we would like to reiterate our feeling that many of the recent changes that have been made are positive and are consistent with recommendations we have put forth. In addition, we are impressed with the new approach, the new style and the new spirit that seems to exist in the Ontario censor board. As an industry, we welcome that. At the same time, Mr. Chairman, we thank you and your committee for this opportunity to articulate our views. As Mr. Lightstone has indicated, we would be pleased to try to answer any questions you may have.

Mr. Mancini: Yesterday, when we visited the censor board offices, we were talking on a casual basis about the cassette industry. Now that this has become something the consumer is buying into heavily--the video tape machines and the cassettes that are put into these machines--I put the question to the people of the

sensor board whether or not the censor board had outlived its usefulness because with the mail order houses providing any type of film an individual may want and with these pieces of equipment right in a person's home--how that would basically affect the future of the censor board. I was wondering whether you had any feelings about that.

Mr. Roth: I don't know if I can respond with any accuracy as to how that will affect the life of the censor board. On a personal note, I think the censor board is out there trying constantly to get a handle on what is referred to as "community standards." I think that when the type of material you are talking about begins to proliferate through homes to a much greater degree, and coupled with the impact of other technology that is either here or around the corner, the likelihood is that that will affect the reading they have on community standards. That would probably be, in my view, a more direct result rather than their role in terms of dealing with product and fulfilling a need to provide the Ontario public with information on what is still going to be on theatre screens.

Mr. Mancini: That leads me to the next point which would be that you could have a film you are showing in public theatres and the censor board could, under today's conditions, of course, cut certain parts which are offensive to community standards, but then also through distributorships, individual people could be ordering the cassettes without the cuts. That would put your industry, I believe, in a very difficult position. Would you, as a matter of course in those circumstances, just provide the cassettes without the cuts? Or would you adhere to the censor board's opinion that it is violating community standards and the cuts that have been made for the theatres also would be made for the cassettes? See, that is what the whole problem is going to encircle around.

10:40 a.m.

Mr. Lightstone: I do not know how you would handle that situation. It would be the same as when cuts are requested with the actual release in Ontario and an uncut version is shown on television from the United States. I do not know how you can police that. There is no way of controlling it to my knowledge.

Mr. Mancini: But the only way to get an uncut version from the United States would be to have a decoder on your TV set in order to be able to tap into pay television, from what I understand.

Mr. Lightstone: No, I am saying supposing a picture here in Ontario has two cuts and the same picture is shown uncut from a Buffalo television station. I do not know how you could handle it.

Mr. G. W. Taylor: Mr. Chairman, it is generally unlikely because TV, I think, is far more restrictive on its own because of public demand and what it thinks is--

Mr. Lightstone: Well, the classic case happened to my company with a picture called Pretty Baby, which was not allowed to be shown in Ontario but it is shown on American television.



Mr. G. W. Taylor: In Buffalo, uncut?

Mr. Lightstone: Yes, the actual picture. That picture could be received in Ontario by viewers of television.

Mr. G. W. Taylor: That is not from pay TV is it? It is just a regular station?

Mr. Lightstone: No, but I do not know how you stop that.

Mr. G. W. Taylor: Still that is an unusual situation because more of them are far more edited on TV than they ever are in the theatres. This is for two reasons--one for commercials and one because--

Interjection.

Mr. G. W. Taylor: Well, even far more because what they view as the community standards that they can put across on TV.

Mr. Lightstone: I am not sure about whether to cut or whether there is always a warning. You see a warning on a television picture that some scenes may be violent and parents are advised not to let their children--

Mr. Mancini: What share of the market will video cassettes be taking up in the near future--say by 1990?

Mr. Lightstone: Right now it is very, very small. It is even small in the US where it is larger than it is in Canada. I think it is around three or four per cent in the US, as somebody mentioned when I was down there about six weeks ago, and it is even less in Canada. But that is not to say that it is not going to become more and more as the equipment becomes cheaper because of volume sales. I am sure it is going to increase. To what extent I really do not know. Right now I think equipment costs you \$700, \$800 or \$900 for the installation. Five years from now it could be \$300 or \$400 which means you would have a mass market on your hands. How fast that is going to take place I just do not know.

Mr. Mancini: We had an actors' strike not too long ago over this very issue and certainly both sides thought this was a very significant part of the action for the future and that is why--

Mr. Lightstone: It will be, that is true.

Mr. Mancini: Would you have any kind of percentage figures?

Mr. Lightstone: At a guess?

Mr. Mancini: Sure, give us an educated guess.

Mr. Lightstone: Maybe in five years it could be up to maybe 15 or 20 per cent. It is just a telephone number I am giving you as far as a percentage is concerned. I really do not know.

Mr. Roth: It is growing. To give you an idea, the best

handle we have in Canada, in both commercial and residential statistics, we expect that there will have been something like 200,000 players in the country at the end of 1981 which probably included about 60,000 shipments during that year which was 50 per cent higher than the previous year. And listening to people who are the hardware suppliers make their projections for 1982, they are forecasting that their 1982 shipments will be 100 per cent higher than 1981. That is really from a standing start and I do not think anybody expects that it will continue, nor does anybody expect that all of the video shops that you see on just about every corner are going to stay in business. But it is going to be a significant ancillary market for the companies.

Mr. Mancini: My final question is then, Mr. Lightstone, how is your industry going to deal with the problem that is going to develop over films being cut and censored for public viewing in the theatres, as to whether or not you are going to implement those cuts for the cassettes? How are you going to deal with that, because you are dealing with the same market?

Mr. Lightstone: Yes, we are. I do not think a decision has been made. I would just assume we would probably go along on the same basis we are doing now. In other words, the cassette will probably arrive in Canada uncut and be distributed as uncut until somebody says something else to us. That is about the only answer I can give you on that.

Mr. Roth: I think too because the majority, the great majority of the product that is handled by our member companies is really not cut.

Mr. Mancini: That is not the point at issue. The point at issue is--

Mr. Lightstone: In other words, most of the product you use is not of a sensational type which would require cutting.

Mr. Mancini: We were told that about 15 per cent of the Ontario population are moviegoers and, if in the future, say within the next decade, 10 or 15 per cent or more of the population are able to buy video recorders and are ordering cassettes which are uncut, then we are more or less making a mockery of the whole issue of censorship and the censorship board--

Mr. Lightstone: Yes, it is a contradiction. That is right.

Mr. Mancini: --and the whole issue of community standards might as well go down the drain. That is why I am posing these questions to you because evidently your industry is working along with the censorship board--

Mr. Lightstone: Yes, we are.

Mr. Mancini: --and your comments this morning, sir, were quite complimentary in some ways. So one would assume that, more or less, on most occasions, you are in agreement--not total agreement, of course--but in agreement with some of the things that are going on.



But if you are casually going to say, "Well, when the cassettes come in, they are going to come in uncut and whoever has a recorder is going to be able to view the version uncut," then the whole issue of censorship has been turned upside down.

Mr. Lightstone: But when we make a picture, we make it for what we think is the North American market. Now, if certain parts of that market, like the various provinces of Canada, want to make a cut or have it classified or censored or whatever you want to call it, that is something that we find out after the fact, after the picture has been made. We do not know that going in.

If a provincial board requires a cut or something else, then we have to deal with that and accept that on a local basis. But we cannot go back to our studio and say: "Possibly in the province of Ontario they may not like this. We had better take this out." We just cannot operate that way.

Mr. Mancini: Yes, I understand that, but you do in a way because once you have your film viewed and once the censor board makes its decisions, by a majority vote it is now, you have to accommodate yourselves to that.

Mr. Lightstone: Yes, we have to accommodate ourselves to that local market.

Mr. Mancini: My question is, if you are going to accommodate the censor board and the Ontario jurisdiction in the public theatres for viewing because of this issue, why would you not be willing to do it in the cassette part of the industry? Why would you automatically assume that you would keep sending the cassettes in uncut for whoever would wish to purchase or rent?

Mr. Lightstone: Are you suggesting that we should cut our cassettes in accordance with the theatrical films? Is that what you are telling me now?

Mr. Mancini: My concern is that, as the video-cassette industry becomes an integral part of the home--

Mr. Lightstone: Let me put it to you this way: We do not like cutting anything, whether it is theatrical or anything else, and we only do that if that is the only way we can display the picture.

Mr. Mancini: So you are against censorship altogether? Is that your basic premise?

Mr. Lightstone: I am in favour of classification only, rather than censorship.

Mr. Mancini: So there should be no cuts, period?

Mr. Lightstone: That is my personal opinion. That is not speaking for the other members. They can have their own opinion.

Mr. Mancini: Evidently you hold a senior position with a

large company, so that must be basically the view of the company.

Mr. Lightstone: It varies from company to company, but I would not want to speak for the other companies. But personally, our company is in favour of classification.

Mr. Mancini: And absolutely no censorship?

Mr. Lightstone: I would prefer that, yes. At the same time we know--

Mr. Chairman: We should have had him with us yesterday.

Mr. Epp: He might change his mind.

Mr. Chairman: We are sorry. We are just--

Mr. Robinson: If I could draw a point to Mr. Mancini's attention, and it is in this folder that the board provided for us yesterday, the opening paragraph, I think, is the operative one. If I might quote it, just before I ask a couple of questions, it says, "The Theatres Act was enacted in response to public demand for the monitoring of all films intended for public exhibition in Ontario and, second, it gives to the board the mandate to approve films for exhibition in this province."

I have to conclude that Mr. Mancini's questions were more directed to what the role of censorship might be as it provides for private exhibition as opposed to public. That is what you are saying; you are asking about cassettes that private individuals buy for their own private purposes, as opposed to some of the things we heard yesterday about what constitutes public exhibition. I am just asking, in light of your questions, if you would reconsider that position as well.

10:50 a.m.

Mr. Roth read his statement very articulately, although somewhat quickly for us to absorb on the way by. I think he made some comment about the board was somehow doing a disservice to the industry by making allowances to review video cassettes or video discs. Could you expand on that and tell us where you are going?

Mr. Roth: At the present time a 35-millimetre film, for the most part, is shown in the kinds of theatres owned and operated by Mr. Posen's members, without very much competition from a similar type of product elsewhere because of the difficulty in moving that product around and the cost of obtaining what we refer to as a performance licence, which the theatre has between itself and its supplier, the distributor.

What has happened with the advent of video cassettes, which are readily portable and made available through the whole proliferation of video cassette outlets, is we are faced with a number of hotels, bars, restaurants and other facilities that have decided in a very entrepreneurial way that the showing of that material to their customers would enhance their business by either increasing the number of customers or keeping the customers in the



facility for a longer period of time, so that the local exhibitor has two forms of competition: He has direct competition from that product that is being shown in the bars, and because it is on cassette, and because of the distribution system, it may be in advance of when he is going to show that specific film in his theatre.

So he loses twice. Some of the customers have already seen it at the bar and he has that direct competition. As I said in my remarks, the bar is infringing under the owner's copyright, in that he does not have a performance licence. That material is strictly for you and I to buy or rent and show in our homes.

The approach that has been made by these people is to have their equipment licensed by the board, by the theatres branch and to go to the board and have the product classified the same way as we would have a film. What we have suggested, and not just to Ontario but to other jurisdictions is that, since we really have the rights to that product and we do not want it shown except under our own initiative through these outlets, the board not accept that product for classification. Their primary purpose is to serve both the Ontario public and the Ontario theatrical industry. The fact that somebody decides there is another use for that product in our view is an unwarranted concern on the part of the board.

Mr. Robinson: Are you speaking of infringement of copyright?

Mr. Roth: Yes.

Mr. Robinson: To take it a step further, you are asking the theatres branch somehow to become your agent in an action against infringement of copyrights?

Mr. Roth: No. Again, as I said, number one, we are pursuing infringers through the courts but, I think in a practical sense, given the number of prospective infringers and the limitations of crown prosecutors, police investigators, all of whom are part and parcel of that system, very frankly we need some other support facility. It is not a difficult thing for the board to do if they felt they had the right to do so.

Mr. Robinson: Are these cassettes made available through you as distributor?

Mr. Roth: Through our member companies, not directly through the members of the Canadian Motion Picture Distributors Association, and you are talking about corporations that are well divisionalized into production companies, theatrical distribution companies, TV distribution companies and now video cassette distribution facilities.

Mr. Robinson: So through no direct link, though an indirect one, one branch of your company is hurting the other branch?

M. Roth: Not with any design because clearly all of those cassettes are marked very clearly on both the box, the case and

even the leader, "For home use only." Again, frankly, some of the people who end up being the users do so in naivete and when they are advised by ourselves or by their own particular trade association that they are doing something that is an infringement and could be costly to them, in many cases they stop. In some cases they do not.

Mr. Chairman: You say that they are marked for home use only, but if a hotel purchases a cassette you can assume it will not be for home use.

Mr. Lightstone: No, but that is done through us. The hotel is supplied by a recognized distributor. We do that ourselves. Those are the only cassettes we actually distribute in Canada, for hotel use only.

Mr. Chairman: Why would your distributor or the company want to distribute a cassette before that particular movie is shown in a theatre, for example?

Mr. Lightstone: It is not shown before.

Mr. Roth: We generally do not.

Mr. Chairman: Something that has been distributed to a theatre and shown in a theatre chain?

Mr. Lightstone: And then it goes cassette, that is right.

Mr. Chairman: Then what are you worried about?

Mr. Lightstone: Unfair competition to our theatrical customers, I would believe.

M. Robinson: How many places in Ontario are using this, to your knowledge?

Mr. Lightstone: That is the problem. We only find out after the fact. There is no real way from our position of checking up to find out how many of these people are using these cassettes in that particular way. We find out when we get a complaint from possibly one of our local customers that the bar down the block is showing pictures which he is showing at the same time.

Now, he makes his living out of theatrical exhibition only, whereas the other gentleman involved has got the bar or something else going plus the picture at the same time, which our customer feels, justifiably so, is unfair competition. He is also violating the home use only as well.

Mr. Robinson: Do you have any sort of factual information. Can you give us any kind of handle on the sort of numbers we are dealing with?

Mr. Roth: We do not get them all, but in our office just from Ontario I would say we are getting something in the order of half a dozen complaints a week from either the companies themselves or from the local exhibitor who is faced with that competition.



Mr. G. W. Taylor: I was going to follow on the same thing, the same line of questions because I am having some difficulty. I try to approach things from a practical point of view and I am trying to point out what you are trying to get at in a practical manner. I have some feelings on it and some understanding of what you are doing, but other parts leave me.

I might add, some of my colleagues know I am kind of a movie nut freak. I have a video cassette machine. I have all kinds of knowledge and play around with the stuff. I do not take the X-rated that we saw yesterday, but in asking the censor board to do what you are doing, if I correctly understand the conversation we had yesterday with the censor board, they do certain of these cassettes, label them or cut them.

I got the impression those were not the leading films you already have on the market, that these were those industries that were producing such cassettes. Let us call them the pornographic, hard-core stuff that is coming through and they want to get some legitimization, so, "Let's put it through the censor board."

I get the feeling through the process of the censor board you are asking us to protect an economic market which is really already in your hands. You produce a film. If it goes to the movie houses you are getting your built-in amount of money, whatever mathematical rate you put it at. You have got that process. When you sell the cassette to a distributor who is going to sell it, be it the local video shop, you must have built in some market there for yourself.

11 a.m.

The next stage you are at is somebody is using that for a purpose you think they should not be and, although you have labelled it for home use, and I don't fully understand the law on copyright in that area, if you have so labelled it for your own private use, you cannot use it for anything else. I hear the same statements made about football games, "only for the viewers," and the hockey games, et cetera, for commercial enterprise. If it becomes only a service of the bar--supposing I am running a bar and I say, "We are running old movies over here. We have Charlie Chan some nights, we have Sherlock Holmes other nights." How do we get at that, because we are looking at an economic market? I know what you are trying to get at, and I don't know how we put it through the censor board to make them. Suppose those films never go through the censor board? Pick one out, *Absence of Malice*, that is going to be on cassette eventually.

Mr. Roth: If they do not go through the censor board, then the user has another problem. You have to bear with me, because the purpose of this meeting is not to educate everybody in copyright.

Mr. G. W. Taylor: I recognize that.

Mr. Roth: The fact is, under Canadian copyright law, there is an infringement, and, if it were to proliferate to any

large degree, the people, the creative community if you like--I think there has been enough study to prove they would suffer a loss. We have to assume that, particularly in the smaller communities of this province, theatre owners are faced with sufficient competition from the whole fragmentation of the leisure market available to their prospective customers. In many cases, they are just making a living and little more. So anything that adds to that precarious situation is not healthy for the community, and it is certainly not healthy for our industry, and I mean both sides of the industry, distribution and exhibition. That is our prime concern, that we maintain to the greatest degree possible the viability of those particular theatres.

Mr. G. W. Taylor: Of all sources of income for the movies.

Mr. Roth: That's right; that is exactly right. If you look at statistics of our industry, the number of admissions in Ontario are basically flat. What protects the industry is the ability to increase ticket price and, on the exhibitors' part, to have a fairly active candy bar. Those are the economics of the business and that is what we are looking to protect, when somebody comes and uses a product that they are not entitled to, because it is easy for them. The board would not deal with a 35-millimetre copy of *Absence of Malice* if it was brought to them by an unlicensed distributor in 35-millimetre form. They do deal with it if it is brought to them in the form of a cassette. All we say is, "Do not deal with it unless it is brought by a 35-millimetre distributor who"--

Mr. G. W. Taylor: Do you mean that somebody could bring a cassette of *Absence of Malice*, using the same example, give it to the dealer branch, have it labelled and then distribute it--

Mr. Roth: And show it.

Mr. G. W. Taylor:--and show it, without paying any extra recompense to you?

Mr. Roth: That's right.

Mr. G. W. Taylor: I guess I am more concerned not about it going through there, but about the person who picks it up at the local video store, has his machine in the bar, cranks it in and says, "For the service of my patrons. You can see this particular movie. By the way, buy some beer while you are at it."

Mr. Roth: Then he is in contravention of your act, number one, as well as infringing on the copyright, number two.

Mr. Chairman: Do you mean because of advertising?

Mr. Roth: He has a public exhibition of a theatrical work and he must have it classified under the act.

Mr. Robinson: He would have to have his specific copy classified.

Mr. Watson: You mean if I brought in a 35-millimetre film



to get it classified, they would not classify it for me?

Mr. Roth: I don't believe they would, if we are talking about that quality of product. They would, I think, assume there was a problem with the material. There are licensed theatrical distributors. Each one of our member companies is licensed by the board.

Mr. Watson: If I wanted to do that, I would have to be licensed first whatever the film I was taking in? I would have to be licensed by them before they would do business with me.

Mr. Lightstone: As a distributor in the province.

Mr. G. W. Taylor: The other problem is getting them cheap enough for the video cassette operator and still maintaining a profit for yourself. If you prevented this by economic means, the price to the local video shop would rise dramatically. Therefore, you wouldn't have a market there, or you would have a diminished market--to try to protect it economically to make sure the guy, using the same example--

Mr. Lightstone: We are not trying to restrict the cassette market. We are just trying to set it up in a businesslike way, where every segment of our industry can make a living.

Mr. Roth: I think, if it is a viable market, the point is that people in the business of distributing film will service that market, but they will want to do so, as Mr. Lightstone has said, in some kind of structured sensible way that does not just trade dollars, that derives dollars over here and loses them over on the other side. There's no point.

Mr. G. W. Taylor: What about the discs? Are they causing any problems?

Mr. Lightstone: They are just another form of a cassette. It is a different way--

Mr. G. W. Taylor: I recognize that, but to my knowledge so far, they are not as easy to duplicate.

Mr. Lightstone: You can't duplicate them.

Mr. G. W. Taylor: With a cassette, I can duplicate. I can run it off even though the label says "Don't do that" unless there is some mechanism on it. The discs are not getting the--

Mr. Lightstone: To this point, yes.

Mr. Roth: The discs are not nearly so popular at this stage as the cassette.

Mr. G. W. Taylor: No, they are not, and they are not going to the censor board either.

Mr. Watson: Your problem is really that you wouldn't

object to a film being shown at a bar if you were getting the distributing fees on that film.

Mr. Lightstone: Not necessarily. It's affecting our regular legitimate customers. That is the problem.

Mr. Watson: But you would like the bar to be your regular and legitimate customer. You would work that out within your system.

Mr. Lightstone: That's right.

Mr. Roth: The bar will not be a long-lasting customer either, but in the meantime while the bar is discovering that, it is hurting our long-lasting customer, who has been a customer since the turn of the century and will continue to be a customer. The bar will be a very sporadic customer.

Mr. G. W. Taylor: Doesn't the time lag help you there though? Not many of the cassettes are out at the same time as they are out in the major movie houses, usually three months, six months later, although you do have some repeats.

Mr. Lightstone: The time in between, when they are on cassettes officially after a theatrical release, is getting shorter and shorter almost by the month.

Mr. Chairman: Can't you control that?

Mr. Roth: How do you control somebody going across the border and bringing in a cassette?

Mr. Chairman: You can't otherwise?

Mr. Lightstone: You mean by not producing cassettes until--

Mr. Chairman: Yes, if you have some overall control of distribution, I would think--

Mr. Roth: There is a basic time frame. I think we are talking about somewhere between six to nine months.

Mr. Lightstone: It varies from company to company.

But then again we have people who somehow or other get their hands on a printmaker cassette completely without our knowledge. Before we know it, we find out Raiders of the Lost Ark is playing three months after release in theatres and should not be playing until maybe a year after. We have that problem.

Mr. Chairman: I have one point. I have watched television in a bar and the concentration span is about three minutes unless it is an awfully dull bar. Do you feel they are real competitors to theatres?

Mr. Lightstone: Even if the man sees three or four minutes of the picture and that is all that registers on him, he



probably feels, after he has seen it in the bar, that he has seen the picture and he won't go to the theatre.

Mr. Hodgson: You were saying they could go across the border. They can't go across the border and bring it in like that, can they?

Mr. Lightstone: Yes, if they have paid duty on a cassette, they can bring it in.

Mr. Hodgson: Yes, but some of these movies that are coming in offshore, let's say, they may not even be allowed in here. It is against the law to show them, and they are usually shown in a back room, not in a bar.

Mr. Lightstone: We are talking about two different types of pictures.

Mr. Hodgson: You are talking about all types.

Mr. Lightstone: What we are talking about is cassettes that are legally produced in the US and somebody in Canada goes down there and buys them from an agent in the US, brings them up to the Canadian border, pays the duty, and from then on, he just goes. The other type of thing that is brought into the country illegally, I don't know what is happening with that; I cannot speak for that.

11:10 a.m.

Mr. Hodgson: If it gets in, and they are not caught, they are okay. But if they get caught--

Mr. Breaugh: There is one conclusion that seems inescapable in all this, that in the overall scope of your corporate endeavours, a decision was made that said that discs and video cassettes are a very viable commodity, a commodity of the future. At the risk of your theatre operators, at the risk of your distribution network for theatrical products, they have obviously made a decision that they are prepared to live with whatever problems accrue from pursuing the video cassette market. These problems you bring before us today are really spinoffs of that corporate decision.

Mr. Lightstone: But our corporate decision was based on the fact that these were made for home use only.

Mr. Robinson: How did you rationalize that you could control that? By saying it was for home use only? I ask you to consider the experience of the record industry. I ask you to consider the experience of all these bootlegged electronic products. I am not being critical but I really wonder how, with any measure of naiveté, you can say that because it says "for home use only," that is going to make it so.

Mr. Lightstone: All we can do, where these instances happen, where it is in a bar, we can just go through the process of doing something about it legally. That is the only way to control it.

Mr. Robinson: Except that you came here this morning and suggested that the Ontario government, through one of its agencies, might assist you in that matter.

Mr. Lightstone: That's true.

Mr. Roth: We continue to think it is not an unwarranted request. We happen to be a constituent of the board in question, as are our customers, but, to correct a misunderstanding, you cannot compare video cassettes to records. Records play all over the place and there is a flow of revenue that goes back from the sale, regardless of what system is used, and it finds its way all the way back to the rights owners or holders.

Mr. Lightstone: And the primary customer in the record business does not make a primary customer in our business, which is as theatre owners.

Mr. Roth: The pricing structure that was conceived at the corporate level was geared to home use. The validity of the system, from everybody's point of view, depends upon preserving the strength of the theatrical market. That really is the prime concern. Without the theatrical market, you don't have these other markets available to you.

Mr. Robinson: But at some time down the road, I don't think it is unreasonable to think that if only 15 per cent of the public are now classified as true moviegoers, the video market may completely usurp that.

Mr. Lightstone: That is possible. We do not know.

Mr. Roth: Very honestly, we do not know.

Mr. Breugh: I just want to raise a couple of points here. The first one is, are you concerned that no matter what the censor board might say or what community standards might dictate, that it is now possible here, in this community, to get virtually any type of film anyone in the world could produce, and you cannot show that same material?

Mr. Lightstone: Could you break that down just a bit more, be a little more specific?

Mr. Breugh: Well, anything that anybody makes, at one time the only place a person could see it would be the local movie theatre, and that is now no longer true. While there are raging arguments about whether you should be allowed to show a film called The Tin Drum, or any other film for that matter, on your premises and under your circumstances, it is possible for me, as a consumer, to see that film.

Mr. Roth: I think there are situations where, as I mentioned in my remarks, companies have a problem. Their objective, obviously, is to have a particular picture on the screen. That's the only way it is going to generate any revenue. On the other hand, you are talking about products that probably appeal to a



particular segment of the market. It may be a very narrow segment. Our companies are structured, for the most part, for mass distribution of theatrical feature films. The odds are that a lot of these products are not going to make a contribution to support that kind of system, or there is not the audience, the demographics being what they are, that will be attracted to that kind of product, which is routinely distributed by our companies. I do not know that it is a major concern. We are distributing the same product as our counterparts are, literally, in other countries around the world, not very much different, unless there is some extreme linguistic or cultural difference.

Mr. Breaugh: Okay, so you do not share our concern in regard to, for example, a motion picture about which the censor board would say to you, as people who make and distribute motion pictures, "We are not going to let you show that one in theatres of Ontario. However, maybe if the Art Gallery of Ontario decides this is true art, it can show it. You cannot, but it can."

Mr. Lightstone: I guess I would have to say, naturally we would prefer to be able to show it, if that is the question.

Mr. Breaugh: But it's not a big deal?

Mr. Lightstone: Yes, it is important.

Mr. Breaugh: Or, for example, if they say, "We are having the world's greatest film festival here in Toronto next week, and we will allow them to show it there at that film festival one time, but you cannot take it and show it around the province."

Mr. Lightstone: I think that is also important. I mean I don't think any of our companies would say we are in favour of that, but we have to face the real world as it is. They say we cannot do this, so we have to go along with it. We have to accommodate ourselves to that decision. We would naturally prefer to show them all theatrically and not have to have the type of picture you are talking about confined to a film festival. The picture may just bomb and that is the end of it, but we would prefer to have the opportunity. But we know on certain occasions it is just not possible.

Mr. Breaugh: Okay, could you give me a little explanation, as somebody who is involved in the business of making and distributing films, why they make more than one version of a motion picture? And why, in certain jurisdictions, the distributors and the motion picture company is quite amenable to the idea that some scenes are cut, and yet in other jurisdictions this is a transgression of their artistic rights?

Mr. Lightstone: Well, I think it probably depends on the community standards they have targeted. European versions of a picture are occasionally more wide open than in North America, because they feel the mores over there are possibly a little more liberal, or however you want to describe it. But they also know that in the United States the audience possibly is not quite ready for that type of treatment, and therefore, they have a different version for the North American market. This has been going on for

years. I guess somebody makes a command decision somewhere that this thing just will not play in Saskatchewan but it will be great in Paris, and that is how they go.

Mr. Breaugh: The difficulty I have with the motion picture industry, you can never quite make up your mind whether you are a business or an art form, and you keep flipping from one side to the other. I just wish at some point you would make up your mind, what the hell are you? I mean a businessman would look at something like a 90-minute motion picture and the censor board says you have to cut something--

Mr. Lightstone: We are not a business or an art form, we are entertainment. We hope we are entertainment, because that is where the mass market is. The mass market is not in the artistic field. That is a very small percentage.

Mr. G. W. Taylor: --falls to commercial integrity. That is why there are two versions, and we accept cuts and do not accept cuts.

Mr. Lightstone: Sometimes a miracle happens and an artistic version is also commercially successful and that is a great day for everybody. That is the ultimate. That is what we are always aiming at. But we also know that again, a very small percentage of the audience would like to see artistic pictures one after another. Basically they want entertainment, whether it is comedy, light drama, or that type of thing. We are a business, after all, based on entertainment. We have to aim what we make at what we think is going to be the largest market.

Occasionally, we see some picture that is obviously an artistic thing. We figure we have to have a varied program, since we hope to satisfy every segment of our audience, and we also hope maybe that artistic picture we know going in is going to be an artistic picture could catch on commercially. But it is all a gamble because when we decide to make a picture, it is possibly two to two and a half years before that finished picture hits the market. We have to predict two to three years' ahead of time what the public, at that time, will pay money to see. As I say, it is a very, very big gamble.

11:20 a.m.

Mr. Breaugh: How common a practice is it in the industry to go for a kind of a banned-in-Boston routine? You pick a jurisdiction that you know will maybe not influence the market a hell of a lot, but the publicity that is generated by getting part of your film cut, banned, censored, will be so much--

Mr. Lightstone: I do not think that applies.

Mr. Breaugh: You do not do that at all? It never happens?

Mr. Lightstone: No, I don't think so. When cuts are requested in our pictures, we are disappointed. It is not something we hope for because a cut here will make it at a box office somewhere else. We would like the picture to play to everyone.



Mr. Breaugh: Are you reasonably well satisfied that we, through the censor board here, are evolving to a system which--how to put it--well I guess generally where we are going is we are going to a classification system, but we are not excluding the showing of virtually anything. I mean it can happen. It can happen here and now, today in Toronto. What we would really have is the censor board as essentially a classification system, that is essentially what the bulk of their work is, the main purpose of it all. We really are no longer a censor board except for that small percentage of films which in old-fashioned terms would be rated as obscene.

Mr. Lightstone: A censor board is still an organization which can cut pictures and can ban pictures. A classification board just classifies. It does not cut nor does it ban. So you cannot say what we have here is possibly classification.

Mr. Breaugh: No, but we are going that way.

Mr. Lightstone: I would like to think so.

Mr. G. W. Taylor: What happens when they refuse to classify it, which is also what some classification boards do, which means it is back on your lap? You say, "What do I do with it now, they will not put a label on it?"

Mr. Lightstone: I don't think that is a classification board, that is still a censor board, probably a liberal censor board. The only one to my knowledge is probably Manitoba which is straight classification. Everything else in Canada is in my opinion a censor board.

Mr. G. W. Taylor: But you are familiar that some of them, you know, are put into the board and they say, "No, we won't put a classification on that." Then it is back in your lap as a distributor. Then you in your own business know full well you will then fully understand that some other board has done some clippings and you will adjust that film.

Mr. Lightstone: What is our reaction?

Mr. G. W. Taylor: Yes.

Mr. Lightstone: Surprise and disappointment. If this is the only board that does that. If the picture is passed in BC or Alberta or Nova Scotia and some cuts are requested in Ontario, naturally we would bring it to the attention of the board that these other boards did not ask for the same cuts as Ontario has. We ask would they look at it again and maybe possibly change their opinion. But, again, as I said before, we have to live in the real world and if that is the only way we can get the picture exhibited in Ontario, we unfortunately have to do that. We do not do it happily but we do it because that is the way it is.

Again, I repeat, and this is for my own company only, we would prefer a classification.

Mr. Breaugh: In saying that, you are accepting that to get a more general classification you would probably on occasion be prepared to remove certain scenes from certain pictures as they do in the US?

Mr. Lightstone: No, but that again is censorship, not classification. You cannot remove scenes and say it is classification.

Mr. Breaugh: Okay. Let me bring this fine point around. In the United States it is fairly common practice that if you want to have a more general kind of classification, there are certain little scenes that get cut, maybe so reluctantly, but they adhere to the notion that they have a classification system there and it is at your own volition, if you want to get a more general distribution or a more generalized label of your film there are certain things you will accept as a no-no. It is not seen there as being censorship. It is called classification. What is the difference?

Mr. Roth: The distinct difference is that one way or the other all of those pictures are classified. They are not banned and sooner or later they go all the way from general up to X-rated. But they are all classified.

Mr. Breaugh: That is an acceptable procedure. The only thing I see that is removed is the banning of the showing of a picture. In other words, they say, "You can make whatever you want, you can show it, but this is the label we are going to put on it."

Mr. Roth: That is a significant difference.

Mr. Breaugh: That is the difference that you want?

Mr. Roth: Yes.

Mr. Breaugh: One final piece of business here. I think in Canada, in recent years anyway, there has not been a lot of activity to kind of nail films as being obscene. I don't see a lot of press about it. There were a few instances with the censor board here but I haven't seen the federal government really pursuing film makers for making obscene material.

Mr. Lightstone: But that's a provincial area.

Mr. Breaugh: No, not censorship, I mean under the Criminal Code a pursuit that something is obscene. Do you have any comments on that? We saw some old tapes yesterday which most of us would agree that whoever produced that film produced something which is not right, or whatever words you choose to put on it. That film is there. How do you, as an industry, deal with that? Are you happy that there seems to be no aggressive movement on the part of government to prosecute companies who make films like that?

Mr. Roth: I think we are happy that the prosecution effort isn't there. I think that it is probably an indication generally of the type of product that is on the screen and as well I would assume whatever case law has been established that people



at the province level who were enforcing the Criminal Code have developed a little better understanding of what in fact is and is not obscene and perhaps there is a better understanding of the role of the various provincial censor boards.

It does happen from time to time. There was a case recently in Alberta that was not pursued. Somebody took an action. Whether they were compelled to take an action because of complaint or because of the initiative of the police, I really don't know. I have to think that for the most part our companies are going to distribute product which they feel is going to be shown on the basis of merit. It really does not conflict with any community standard in North America.

I think the average product is now something in the neighbourhood of \$9.5 million at negative cost and on top of that a company has to add the cost of prints and tremendous promotional effort. There is just no point in going through that exercise with the final result of ending up in the courts.

Mr. Robinson: Could I follow up on Mr. Breaugh's question? From a purely economic standpoint, what classification is most viable to you?

Mr. Lightstone: What classification produces the most revenue?

Mr. Robinson: We talked about the four classifications. Take Saturday Night Fever as an example, which began with a restricted rating but was somehow adjusted or got a general rating which enhanced your market. Is there one classification over another that you prefer?

Mr. Lightstone: It is somewhere in between adult accompaniment and parental guidance I would say. Either one of those.

Mr. Robinson: Enough to make it exciting and not so much that everybody can't see it.

Mr. Lightstone: That's right. It has to be pretty well general.

Mr. Robinson: Is that a market that film makers specifically aim for in a large way?

Mr. Lightstone: I don't know whether they do that consciously but that seems to be the market that produces the most revenue.

Mr. Robinson: Then it is fair to assume that you would produce for the largest audience.

Mr. Lightstone: Yes, that's the idea, again with the odd exception (inaudible) we know going in is not going to be mass audience but we feel we should have a fairly balanced program. We don't want to be classified as a one type of picture industry film.

Mr. McLean: Mr. Chairman, I have three questions for Mr. Roth. I would like to know if he, in his opinion, feels the censor board serves a good purpose.

Mr. Roth: In my opinion, I think the censor board does fulfil a good purpose and is in a position, with the changes that have been made, in fact to fill a better purpose.

Mr. McLean: Do you agree that the four standards they have for classification are okay or not?

Mr. Roth: I think the terminology for the fourth category, the adult accompaniment--and we were on record when we were told that was going to be the wording--is not as appropriate as it might be, but certainly it is a far better system than the three.

11:30 a.m.

Mr. McLean: In your opinion, how would you think we should control these cassettes that come into the province? In what way would you see the government or the censor board taking a part in controlling the cassettes that come in from across the border? How would that be done in your opinion?

Mr. Breaugh: You would not say "banned" would you?

Mr. Roth: No.

Mr. McLean: They are controlled.

Mr. Roth: I would ask you to elaborate in terms of their ultimate use.

Mr. McLean: Do you think there should be legislation that would control them?

Mr. Roth: No, I do not. I think there is certainly sufficient legislation and sufficient mechanisms between Canada Customs and the Criminal Code that the province can be satisfied that cassettes can be controlled. If there is a cassette that is going to be used by someone in his home, I think from all our points of view we should be satisfied with that.

Mr. McLean: You can see no problem with them then?

Mr. Roth: Not in that context.

Mr. Chairman: You were complimentary about the board. You distribute on a nationwide basis.

Mr. Roth: Yes.

Mr. Chairman: You have films going into all provinces in Canada. I notice, for example, from the information we have that Ontario and British Columbia are much more strict than, for example, Alberta and Quebec. You must have formed some opinion as a result of that. You see the same movie dealt with differently by



one province as compared to another. What is your reaction to that?

Mr. Roth: Our reaction generally is that we are not happy and sometimes, very frankly, totally perplexed. Our hope would be, and I think it is more than a hope, I think we have a good deal of confidence, that as far as our members' product is concerned, the fourth category should permit the Ontario board to treat film with a good deal more consistency when it is compared on a province-by-province basis.

Mr. Epp: You are upset and perplexed by this censorship, and so forth. Mr. Lightstone indicated earlier that he is in the business of making money and it is the dollar sign that determines what goes out there. If it sells it sells, and if it does not sell it does not sell.

Mr. Lightstone: No, I would not go that far. I think personally it is not just dollars with me.

Mr. Chairman: No, I do not think censorship hurts your profit.

Mr. Epp: What I was going to ask you is do you have statistics which show that in Ontario, having the censor board as it is operating now and has operated in the last number of years, with the changes that are evident and so forth, do we have fewer people going to the theatres in Ontario than in Quebec or in Manitoba on a percentage basis?

Mr. Lightstone: On a per capita basis?

Mr. Epp: On a per capita basis.

Mr. Lightstone: Obviously Ontario is our largest market if only for the fact it has the largest population. Per capita, Quebec should be second but because of economic conditions now it is not per capita any more. It used to be second. You cannot go on the population any more because the economics have to come in as far as the various areas of the country are concerned. British Columbia is excellent per capita, so is Alberta, but the economy out there is quite a bit better than in the Maritimes or Quebec. I cannot give you a per capita basis. I just know that, generally speaking again, Ontario is our largest market if only for the fact that it has the largest population of any province. But per capita I would say that Alberta and BC are probably the best.

Mr. Epp: But Ontario, having the censor board, you are not losing money--

Mr. Lightstone: I cannot really answer that. How high is up, type of thing? I just do not know, if we had a different type of censorship board or classification board, whether our market would increase or decrease. I do not know.

Mr. Chairman: They get lots of matinees in the Maritimes, do they not?

Mr. Rotenberg: Could I follow that up, Mr. Chairman? You

both mentioned your dissatisfaction from time to time with the censor board and some of its decisions and so on. Could either of you give an estimate of all the decisions that the Ontario censor board makes, what is your level of discontent? In other words, how many decisions a year really bother you?

Mr. Lightstone: Very few. The only thing is they are so infrequent they are surprising when they do happen--that is all.

Mr. Rotenberg: How many decisions do they make that affect you and how many bother you? Can you give me any numbers or percentages?

Mr. Lightstone: There are not very many at all.

Mr. Roth: I would agree. I want to come back to the question that the chairman asked and that I tried to respond to.

The changes that have been made that are an improvement and make us anticipate, let us say, a reduced level of concern, are very critical. When you have a picture that is categorized as restricted in the past because there was no other alternative for the board, and it is categorized in other provinces in the equivalent of the adult category, I think it is safe to assume--I do not have the numbers, very frankly--the companies have not maximized their revenue from this province because they did not have the market by the very nature of that classification.

What we are saying, though, I think, is an anticipation that the adult accompaniment category should eliminate, to the greatest degree possible, that problem that existed in the past and should not exist in the future. That change was just implemented this past fall or late summer. But when a picture is banned from this market, then you have a completely different situation. You are not talking about a degree of revenue, you are talking about a loss, and for the most part, I think, as Mr. Lightstone has said, those circumstances, as far as our members are concerned, are really few and far between.

Mr. Rotenberg: We had a couple of fusses in the last couple of years which seemed to be far more important than the martial law in Poland or peace in the Middle East. To read the newspapers there were major problems within this province, letters to the editor, TV programs, commentators, and everybody on both sides. You would think it was a major crisis in Ontario. What I really want to know is, from your point of view, how often, either percentagewise or in absolute numbers, is there really a problem as far as you and the industry are concerned with the censor board. Is it once a year, twice a year, one every 1,000 films?

Mr. Lightstone: You would have to ask other distributors besides our members because they are the people who have most of the problems. The last problem I had was a few years ago with Pretty Baby. I have not had a problem since. I do not think any other member of our association has had a problem since then, either. The problems you are reading about are from companies who are not members of our association and I would be reluctant to speak on their behalf.



Mr. Rotenberg: What percentage of the market of the film-going public do you have compared to the others?

Mr. Roth: We have the great percentage of the market.

Mr. Rotenberg: Would it be a fair statement to say that, aside from the odd time, the industry and the censor board are basically in agreement except the odd point and there is not a major confrontation between the two bodies?

Mr. Roth: In the opening remarks that is what we really tried to indicate to the committee.

Mr. Lightstone: Yes. We have a very good relationship with the censor board. We think it can only improve with these changes they have made in their setup.

Mr. Epp: Thank you, Mr. Chairman. I wanted to just ask another question and it has to do with something that was explained yesterday. It has to do with a film, I do not know the name of it, I think it had to do with Vietnam. It was shown in the United States--I am not sure if it was shown in Canada.

Mr. Lightstone: The Deer Hunter.

Mr. Epp: The Deer Hunter, okay--about playing Russian roulette. To what extent do you find that you have a responsibility to the public when issues like this come up--where it has been shown that people have seen the film and then gone out and played Russian roulette and in a sense committed suicide? How do you define your responsibility in that context?

Mr. Lightstone: That is difficult. It is very difficult to answer that because lots of normal pictures show murder. Does that mean that people go out and murder somebody because they saw a murder in a movie last night? I do not know how to answer that, really, as far as the actual effect of a specific movie on the public is concerned. You just cannot explain it, really. I do not think it has that much effect. Maybe it makes a good argument for a newspaper, but I really do not think that because you see murders in movies, or unpleasant things in movies, somebody seeing that movie automatically goes out and does exactly the same thing in real life. I do not really agree with that.

Mr. Chairman: Like the kidnapping or shooting of a president?

Mr. Lightstone: Yes. I do not subscribe to that theory.

Mr. Epp: You do not see that you have any responsibility with respect to limiting those kinds of acts or anything of this nature?

11:40 a.m.

Mr. Lightstone: I do not see it any more than if you read a book where you have the same thing in a book. Does that mean you want to install a claim that there is some kind of censorship for

books because a book explicitly describes a murder, or something gruesome, and by some freak, three days later it happens in real life, that therefore the man who wrote the book, and the publisher and distributor of the book, should have some responsibility?

Mr. Roth: Or is it the responsibility of a film maker, to a degree, to show this? Because what you are talking about was part and parcel of what some people consider to be a fairly important statement on a fairly gruesome war. I am not going to debate with you, but there is another side to that coin--the same way as there is a strong other side to the whole psychology of what compels people to do these things. Is it the movie or is it a whole bunch of other circumstances, and that person is going to be triggered in any event?

There are two arguments to what you are asking. It is an extremely complex question. The danger, in many cases, is trying to say there was that scene in the picture, but it was an entire picture. It was not all that scene, or that segment.

Mr. Epp: Apparently, as far as this movie is concerned, and I did not see it, there were a number of people playing Russian roulette. After they saw it, there was a direct relationship. Some people went out and did exactly that. You cannot help but think that that movie must have triggered their actions.

Mr. Roth: People played Russian roulette before the picture, and they play it after the picture. They will play it tomorrow too, whether they see the picture or do not see the picture.

Mr. Epp: But in this case, there appeared to be a definite relationship.

Mr. Lightstone: In that instance the type of person you are talking about probably had suicidal tendencies anyway. If it was not with Russian roulette, it would probably be some other form. I do not know; I am just guessing.

Mr. Epp: Running across the street and getting hit by a car.

Mr. G. W. Taylor: I just have three quickies. There is the classification, and now labelling--warnings. Are you content with the style, the character, and the content of the warnings? I as a moviegoer would like to see the warnings on there. I do not want to get into the wrong movie, and that is a little added information besides reading the critics and the movie magazines.

Mr. Lightstone: No, we think they are fine.

Mr. Roth: It is a concept that we have emphasized. We think it is a strong improvement in the system.

Mr. Rotenberg: On television programs too.

Mr. G. W. Taylor: The other question: are you content



with the four categories we are now using in comparison to--because there is this interplay of advertising between the United States border stations on television--are ours in conjunction with your other neighbouring jurisdictions, and are you content that they are parallel?

Mr. Roth: They are close. We are on record as saying that ideally the closer all the systems can be, the better it is for the consumer, and certainly the better it is for the industry, strictly from the point of view of understanding, and not being bombarded by anything that is different or in any way conflicting. It is an improvement.

Mr. G. W. Taylor: Two last questions--one if you can give a simplistic one--is there a sort of an in-house movie operation in the United States that self-labels, or self-censors, if you want to call it that? Apart from government operations, is there not one run by the industry itself that gives a particular label, saying if you are going to produce a movie like that--

Mr. Lighthouse: It is an in-industry association, yes.

Mr. G. W. Taylor: Do you participate in any way in that industry?

Mr. Lighthouse: In Canada? No.

Mr. G. W. Taylor: So it is done there, and you are just distributing primarily their pictures.

Mr. Lighthouse: That is right.

Mr. G. W. Taylor: The other question: you were concerned that the board was taking some action with the cassettes. Have you had any examples of your cassettes, of the movies you distribute, that have gone to the board and have, in some way, been labelled and then have gone out for public use, or the use we described earlier? Has there been a case of somebody using them for a commercial performance? My understanding is that the board is not doing that if they get one of your films--legitimate, commercial, top-rated movies--that those are being rejected for labelling by the board.

Mr. Roth: No, that is not my understanding or the information that we have.

Mr. G. W. Taylor: Maybe we could raise that at a later time with the board people as to what the actual process is that is taking place at the board. Those are all the questions I have.

Mr. Chairman: The new legislation, Mr. Roth, provides now for an appeal process. Do you feel that is an improvement? I do not imagine you have had an opportunity to use it or are aware of anybody that has used it.

Mr. Roth: I think in principle it is a definite improvement.

Mr. Breaugh: Have you ever contemplated any litigation to allow you as people who make motion pictures the same rights to be as violent as the six o'clock news or as pornographic as the magazines that are sold at the corner stores?

Mr. Roth: No.

Interjection.

Mr. Rotenberg: You do not watch Buffalo?

Mr. Breaugh: I have not seen that much blood since I saw the Oshawa Generals play last fall.

Mr. Chairman: Thank you very much, Mr. Lightstone and Mr. Roth, for attending this morning. It was a very interesting discussion. We have Mr. Ron Emilio who is here this morning, who is president of the Association of Independent and Canadian-Owned Motion Picture Distributors. Mr. Emilio, would you like to take the hot seat? You have been here for a while and you note the format that we have been carrying on. It is rather informal. I do not imagine you have a statement of any kind, have you?

Mr. Emilio: No.

Mr. Chairman: What basically is your role? In what way are you dissimilar from Mr. Lightstone or Mr. Roth for example?

Mr. Emilio: Well, really we are all in the same business. I do not think there is any difference other than the fact that as an independent association we are the smaller companies that I think Mr. Roth and Mr. Lightstone mentioned are Canadian owned and operated. We represent various products as distributors as opposed to one major company. There are not many differences on the whole.

Mr. Watson: How many companies do you represent?

Mr. Emilio: On a given day it varies.

Mr. Watson: They mentioned eight or something like that. Do you have eight or do you have 80?

Mr. Emilio: Oh, excuse me, I thought you meant products that we handle. There are 10 members in our association, all independent.

Mr. Mancini: Do you have any examples?

Mr. Emilio: Ambassador Films, Cinepix, and so on.

Mr. McLean: Mr. Chairman, if I could ask two or three questions. Do you agree with the censor board? Any problems?

Mr. Emilio: I like the way they operate.

Mr. McLean: And do you agree with the four categories that they have?



Mr. Emilio: Yes, I do.

Mr. McLean: Moving over to cassettes, do you have any ideas on cassettes which should be distributed or cut or is the way it is being done now satisfactory?

Mr. Emilio: The only problem I see with it, it seems there is so much piracy, there is so much illegality the way people are bringing them in, getting them in somehow and duplicating them and flooding the market. To me it is a scary business.

Mr. McLean: Yes, that is the point I wanted to make. What recommendations would you make to control that?

Mr. Emilio: I really do not know. I have tried to think it out. I have watched what is happening in the United States; I have watched what has been happening here; and really I wish I had a solid answer to give you. I do not know what better controls could be put in that would protect the overall industry more and the public as well I guess. I really do not have a lot of ideas on it, I am sorry.

Mr. Watson: Do you see the role of the censor board in that kind of protection at all? I do not know whether you were listening to the last--

Mr. Emilio: I did not catch all of the cassette conversation.

Mr. Watson: Okay, one of the suggestions was that the censor board not handle these unless they were brought to them by a recognized distributor--in other words, only for public showings. In a way, what I took out of it was attempting to maybe expand the censor board as a means of trying to police this. Whether it would work or not I think would be another question, but at least expanding their role in attempt to police this, which some of us might have some questions about.

Mr. Emilio: Certainly, if it would help police it, I guess I would have to say it would be a good idea to have the censor board involved as well, on a larger scale than perhaps they are now.

11:50 a.m.

I know that in order to play in the commercial type of theatres, the censor board is involved with the cassettes, but there are a lot of cassettes that come in that, of course, that the censor board knows nothing about, and those are the ones that are perhaps pirated and the most illegal ones are floating around.

As an individual--and I am not going to speak for our association at the moment, because we have not discussed this particular subject; I, really--as a personal opinion--would like to see the censor board involved more in cassettes in all forms, to protect the industry. I guess I can say that as an individual. I am not speaking for the association.

Mr. Robinson: Could you give us some sort of broad idea of what type of films, or what segment of the industry, the distributors as a group, represent? Is there a particular type of film that you and your group represent, or a particular segment of the film-making industry? Are they smaller film producers?

Mr. Emilio: In many cases, yes; in some cases, no. As independents, we have handled as important pictures as major companies would handle. These have been pictures that were made by independent film makers in the United States and other parts of the world, but they would come to us with it for a more independent type of distribution. That is related to our own business, where we may do a different type of a job, a more specific job, with different terms, for that matter, of operating costs and so on. So we have handled all forms, good, bad and indifferent.

Mr. Robinson: Do you distribute to the major theatre chains?

Mr. Emilio: Yes, we do.

Mr. Robinson: I notice from the 1980 report of the censor board to the minister--did I understand you to say that you represent Cinepix?

Mr. Emilio: It is one of the companies in our association; not my own company.

Mr. Robinson: All right. I am speaking to you in your capacity with the association.

Of the very few films that were rejected in 1980, without my taking time to read the report more in detail, three of them, "Passionate Dreams," "Une Bête à Plaisir," and "Dirty Secrets," all by Cinepix, were all rejected by the board. Can you offer some comment on that, as to how that affects you, or how it affects either your association or your member companies?

Mr. Emilio: I guess it is safe to say that the independent companies would be more likely to be the companies that would be offered those types of pictures. Someone is going to place them before the censor boards or try to put them into distribution. That is the type of product a lot of the independent companies are offered. That is the only type of product some of them are offered. Cinepix is a company that handles primarily that type of product.

Mr. Robinson: When these films were rejected--

Mr. Emilio: Excuse me. They are basically a Quebec firm, and operate in the province of Quebec, I think that a lot of that type of product does play freely in Quebec, as opposed to the other provinces. So that company you mentioned and those pictures are usually through playing in Quebec and then they send some of them into the other provinces to see if they are acceptable.

Mr. Robinson: Did you agree? Did you, on behalf of your association agree with the board's decision to reject these in Ontario?



Mr. Emilio: I cannot really say that I am familiar with the titles right at this moment to know whether we agreed or not.

Mr. Robinson: Let me step back, then, for a moment. I believe you said you support the operation of the board of Ontario?

Mr. Emilio: Yes, I do.

Mr. Robinson: Do you support the principles and the guidelines under which it operates?

Mr. Emilio: Yes, I do.

Mr. Robinson: Believe me, I am not trying to cross-examine you. I do not want you to get offended with me.

Mr. Emilio: I have very strong feelings about the subject.

Mr. Robinson: I am pleased you do. Is it therefore the natural conclusion that you would have no difficulty, or your association would not have difficulty with the rejection of films such as these under the board's guidelines?

Mr. Emilio: I have no objection because my own company has had the same kind of pictures rejected. I have no objection to it.

There are pictures that we are obliged, as independent distributors, to handle, because we handle that particular producer, and we handle other pictures that are, let us say, a lot more suitable for the market. We handle those for him. He has these others. We are obliged to try to make an effort to distribute them, although we may not totally agree that--

Mr. Robinson: It is a business thing and not a personal thing, then?

Mr. Emilio: We have to present them to the board. We are obliged to do it as distributors. We cannot just say to a producer--we must remember, as I said, we are independent operators, we are not controlled by major companies in the United States or anything else, we have to run our own businesses on a live or die situation.

Some of our companies have gone out of business because it is not always easy to get the product. That is not what we are here to talk about, of course, but that is why we have to present a man's film for him and give it an honest effort.

Mr. Robinson: From a business standpoint then, you will try most anything on for size contractually.

Mr. Emilio: Not most anything.

Mr. Robinson: Under the terms of the contract that you make and the arrangements you have with this variety of producers, you are obliged from a business standpoint to try these things on for size.

Mr. Emilio: Yes.

Mr. Robinson: What you are saying is that if the board happens to reject them, personally you have no difficulty with it. Professionally you have completed your obligation under the contract.

Mr. Emilio: That is right.

Mr. Robinson: I see. Thank you very much.

Mr. Watson: I have a supplementary to that. Are there any times that you think some of these distributors actually have them go before the Ontario Board of Censors with the view that they might be banned so they could use that as advertising in some other place where they do not have censorship? Is that a factor?

Mr. Emilio: No, not the type of product that we are talking about now.

Mr. Watson: There is always that element in society that seems to think that if something is censored or something is banned that is the one I want to see. It is an advertising gimmick for them.

Mr. Emilio: Not for the type of product--the titles that were suggested a moment ago. You were talking about a--there were pictures that were probably mentioned earlier--perhaps The Tin Drum or pictures like that. Maybe by having some notoriety here, it is going to add some more business elsewhere in the other provinces or the rest of Canada but not for the type of product that this gentleman spoke of. They are 85 to 90-minute actually almost porno films, I guess you could call them--soft core or whatever the words are. By placing them before the board to see if you can achieve some form of notoriety, you are not going to add a dollar to it because they are nothing to begin with, I am sorry to say that. They are just junk.

Mr. Chairman: Any other questions? If I might ask you the same question I asked Mr. Roth. I assume you distribute on a Canada-wide basis across the nation. There is quite a difference in the handling as far as censorship is concerned from province to province. Do you have any comment on that?

I suppose it is incumbent upon you to explain to your customers why something is being treated differently in Ontario than it is in Quebec, for example, or Alberta. Is that part of your day to day chores from time to time?

Mr. Emilio: We have to explain it on a number of occasions, I think, to the people; we have to explain what you are talking about to our customers, our suppliers, because most pictures seem to play pretty well in the United States with the same classification it seems, not with the differences as in Canada. Yes, we have to explain to them, but that is our job to explain to them that there are differences in Canada.

There are community standards that everybody points out.



British Columbia is far more liberal. I think you mentioned that, I am not sure if I heard correctly, but BC is rather liberal and very open.

Mr. Chairman: Not according to the information we have on our chart here.

Mr. Emilio: I thought I heard you say that they were not or something.

Mr. Chairman: Alberta, Saskatchewan--

Mr. Emilio: Very difficult.

Mr. Chairman: Alberta and Quebec seem to be the most liberal.

Mr. Emilio: I do not agree with that.

Mr. Chairman: You do not agree with that? A small "l" liberal. Do you handle more Canadian-made films, for example?

Mr. Emilio: No.

Mr. Chairman: Just across the board.

Mr. Emilio: I handle some. Quite a variety.

Mr. Hodgson: What percentage of films are produced in Ontario or Canada?

Mr. Emilio: What percentage?

Mr. Hodgson: What percentage of the whole film industry is produced--

Mr. Emilio: Of the world market or North America?

Mr. Hodgson: I am talking about the Canadian market more particularly. What percentage of it is produced in Ontario, do you know?

Mr. Emilio: I do not think I can answer that right off without checking it out.

Mr. Rotenberg: For how many of all the films, do you have a problem with different classifications where Ontario is different from other jurisdictions and it is a problem for you?

Mr. Emilio: Not very many.

Mr. Rotenberg: Half a dozen a year, is it that many?

Mr. Emilio: Per company. There are things that surprise us.

12 noon

Mr. Rotenberg: Life would be too dull if you had no surprises.

Mr. Emilio: Sometimes you present a picture and you think it is going to be an adult picture and it is in the restricted classification in Ontario and adult in most of the other provinces. On the other hand, I have seen some pictures passed in Ontario as adult and be restricted in other provinces. It is not really that serious. Any pictures that are banned from the independents are generally pictures that should be banned. No matter who handled them, they would be banned.

I happen to have enjoyed working with the censor board, particularly during the last year. With all the changes that seem to be going on they are concerned about our problems, they are concerned about community problems. I have to say I think they are doing a very solid job.

Mr. Chairman: I just have one question--a question I should have asked Mr. Posen really. We were talking about classification and different labelling and everything like that. Do you have any opinion on the actual enforcement of that classification from the point of view of a theatre--a particular playhouse? Do you have any knowledge of that? For example, are the cashiers actually turning people away if it is a restricted movie?

Mr. Emilio: I would hope so and I think that is something, if you are talking to any theatre owners here at this hearing, I am sure they have all the answers. We trust that when we supply the picture to the theatre chain and they are advised accordingly of the classification or the warnings or whatever, we hope they are policing them. We are not policing them as distributors. We are trusting the theatre owners, they had better be.

Mr. Chairman: Any other questions of this gentleman. Thank you very much, Mr. Emilio. Thank you for attending. We appreciate your coming here and your information.

The committee recessed at 12:02 p.m.



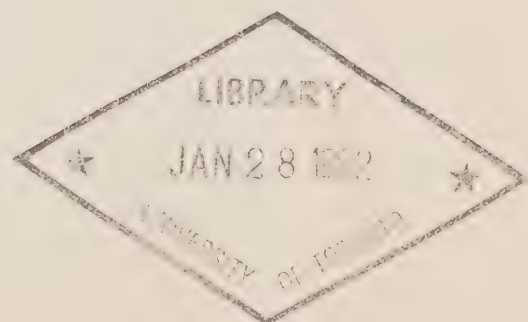
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: ONTARIO BOARD OF CENSORS

THURSDAY, JANUARY 7, 1982

Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)  
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)  
Breagh, M. J. (Oshawa NDP)  
Charlton, B. A. (Hamilton Mountain NDP)  
Edighoffer, H. A. (Perth L)  
Epp, H. A. (Waterloo North L)  
Hodgson, W. (York North PC)  
Mancini, R. (Essex South L)  
McLean, A. K. (Simcoe East PC)  
Robinson, A. M. (Scarborough-Ellesmere PC)  
Taylor, G. W. (Simcoe Centre PC)  
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Research Officer: Eichmanis, J.

From the Ministry of Consumer and Commercial Relations:  
Brown, M., Director, Theatres Branch; Chairperson, Board of Censors



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, January 7, 1982

The committee resumed at 2:11 p.m. in room No. 228.

AGENCY REVIEW: BOARD OF CENSORS

Mr. Chairman: I see a quorum, gentlemen. I call the meeting to order. The first item on the agenda this afternoon is Mary Brown, chairperson, Board of Censors. Mrs. Brown, would you like to take the hot seat? I think you are aware of the fact that our committee on procedural affairs has certain agencies, boards and commissions appear before it during the year. One of the ones that we favoured was the Board of Censors.

We would like, therefore, to have a presentation from you as to the role and activities of the board vis-a-vis the motion picture industry, the relationship with the Ministry of Consumer and Commercial Relations and the government, and generally your activities, particularly since you have been appointed chairperson, and also the amendments and new legislation that have been enacted during the past year.

Mrs. Brown: I would like to prelude this by saying that I really welcome the opportunity to explain the role of the board as we see it and I welcome the opportunity to make a statement about that. At the risk of being repetitive of what was discussed yesterday, I would like to say that in reviewing this particular board, perhaps it is different from a review of other boards and commissions in that the whole concept of censorship is a very emotional one. I think it is necessary to distinguish or to separate one's perception or reaction to censorship from the actual administration of that policy which, I believe, is what we are examining today.

I think the decision as to whether or not a film censorship policy exists is a decision for the legislators. The administration of that policy is our responsibility, and that is the aspect, I understand, that I am to address. Sometimes the exploration of administration and its accompanying problems affects one's attitude to the policy itself, and quite often this evolves. However, the procedures, guidelines and controversial decisions of the board evolve directly, I think, from a philosophy of film censorship which is our interpretation of our mandate.

Our jurisdiction under the Theatres Act is to approve films for public exhibition in the province. The 1978 federal Supreme Court decision in the McNeil case indicated that our approval should be based on the perceived community standards or the standards of the community which we serve. When we were exploring and really trying to assess what our role should be vis-a-vis our jurisdiction and our mandate, I think we had to make certain things very clear.

There has to be a clear distinction between censorship as a broad policy and a specific application of film censorship in a democratic system. There must be a clear distinction between an overall censorship initiated by a government to control a political environment and what we are supposed to be doing, which is a response to public demand that involves itself solely with reflecting the concerns and values of the community as a whole.

In reviewing our jurisdiction and mandate, I think it was made clear to us that the application of film censorship in this province must not be a censorship of ideas; it must never be a political tool. It should not be a limitation on individual or private pursuits. It is not a censorship of books and it should never be a suppression of artistic creativity.

I think it was very clear to us that the act of censorship by our board involves only four per cent of those films submitted for approval. I think most of us who are actually involved in prior approval are much more comfortable with the role when we recognize that the application of prior approval applies only to films in commercial or public distribution in the province. What one chooses to see in one's home or in private screenings is strictly the jurisdiction of the individuals involved.

Our responsibility then is to screen films, first of all, to research what we perceive to be the level of community tolerance for the different classifications and for what should be formally approved. Our responsibility is to research and to establish standards. This has been achieved through constant community contact by all members of the board. We visit high schools, universities, law schools, media associations, public interest groups, anyone who wishes to hear about censorship and who would be happy to give us feedback or an assessment of our guidelines and our decisions.

I, personally, have contacted well over 2,000 people in the last two years. The new members of the board have been actively involved in the last two months in researching their own communities, their own peer groups and their own social milieu. We have this community contact, plus the makeup of the board itself, which, with the transition to a rotating board, is, I think, even better than ever in reflecting the Ontario community in terms of age, philosophy, lifestyle, professional background. Of course, we review the letters and the telephone calls that come in on a regular basis, either supporting decisions that were made or criticizing decisions, and these too are taken into consideration.

After researching what we believe is community reaction to film content, the board members see their role, not as deciding what is or is not acceptable for the Ontario community, but acting as a representative body, reflecting the community and responsible to it.

Using this approach, the board screens every film destined for public exhibition in this province: 35 millimetre, 16 millimetre, eight millimetre and videotape. We screen everything from major productions such as The Deer Hunter, which was mentioned this morning, through travelogues and documentaries, to the



low-budget porn films that are shown in and around Yonge Street. Last year this involved the review of 1,765 films. Of this number, 1,700 were simply screened, carefully classified and approved; five out of the 1,765 were not approved; and in 64 eliminations were requested.

2:20 p.m.

It is that 1,700 that took the greatest of our attention and concern. It is the careful classification of the films in general release that I think is a vital function of the board and the one that impacts most directly on the population as a whole. The parameters appropriate for each of the classifications are carefully researched and applied only after careful deliberation of each film.

It is this function of the board, the classification function, that protects children from premature exposure to material that could be damaging to their healthy development physically, emotionally and spiritually, if you will. It is the classification function that informs the Ontario public, the adult population, about the content of film. It assists parents in guiding the film diet of their children. The importance of this function was emphasized in what I consider a major change in the past year, the introduction of the fourth classification, to give even more precise and accurate information to the theatre-going public.

To summarize, I would like to say that, using our research and our ongoing assessment of the community, 96 per cent of almost 1,800 films last year were screened, classified and approved. However, that left four per cent which, in the condition in which they came to us and on our perception of bottom-line community standards, we could not approve.

Our research into bottom line, and my personal research, has indicated three areas that are, I think, of universal community concern. I know some of the criticisms of a censorship function of the board say, "How can you establish standards in Toronto that are consistent with those in Thunder Bay or Kenora or Niagara Falls?" But when it comes to bottom line, which is what we deal with in a censorship function, it is not that difficult.

I have found that throughout the province there is a bottom line. There is a bottom line in the sexual exploitation of children in films. There is a bottom line in excessive and prolonged promotion of violence, particularly violence and sex combinations; the prolonged and explicit depiction of rape; the woman in bondage. I find there is less and less concern--and I think the other members of the board have too--with the portrayal of sex between consenting adults. That is the bottom priority. It is still a serious concern, but not as serious as violence and the sexual exploitation of children. As I mentioned yesterday, that is probably where, because our assessment of the community is ongoing, we part company with the Criminal Code, which still seems to be concerned with sex, obscenity in a sexual context.

Let's go back to the four per cent which we cannot approve. The majority in that four per cent are low-budget, porn-oriented films, the products often of irresponsible producers, distributed strictly as a commercial enterprise in the belief that sales validate what is sold commercially, and if there is a market for it, the worst in violence, sadism and perversion will be produced.

Last year the board screened on your behalf scenes depicting bloody and prolonged castrations, spikes hammered into vaginas, breasts being lacerated and burned, explicit portrayals of necrophilia, indiscriminate rape of a young bride and groom, a woman pinioned and forced to have relations with a dog, a girl sodomized by a gorilla. We reviewed films which showed in detail that sadistic rape may be the ultimate experience with a male and eventually enjoyed by the woman, that the physical and sexual abuse of the young and helpless is the height of eroticism and that the younger the victim the more erotic it becomes.

Films already produced and marketed portray an on-camera rape of very young girls by a motorcycle gang. I think Peckinpah introduced that whole image of on-stage, on-camera violence. He broke the barriers of violence and that kind of violence, explicit on-camera violence, introduced by Peckinpah has now overflowed into the sex-and-violence combinations which we are getting in our pornography.

It seems to me that a segment of our society seems to be sated by the normal and bored by the abnormal and film-makers are exploring in painstaking detail greater and greater extremes in violence and sadism. The culmination of this, I think, is the snuff film, involving a slow, deliberate torture and vivisection and resulting in the ultimate death of the victim.

When people are making assessments and judgements on whether or not there should be a film censorship function, it concerns me that most people do not know that those films I have just described are not unusual. They form a solid percentage of what we screen every week.

Yet if we deal with these bottom-line situations, it is an act of censorship, a practice that is emotionally and forcefully opposed by a vocal segment of the community as an infringement of rights. This we have to deal with too. Often I am concerned when I finish screening one of these particular horrors that some members of our society, not really knowing the product and in their anxiety to push personal freedoms to the extreme, are trading in the rights of all of us to a quality of life, a sense of dignity and mutual respect, that I think we have a right to too.

There is a very lengthy quotation which I am very fond of using sometimes. I will just read the last line. As Norman Cousins of Saturday Review has said, "The problem with wide-open pornography today is not that it removes the blinders but it distorts the view; what we ultimately have is not liberation but desensitization."

That is our first problem: Our first problem is the hard-core, bottom-line, sadistic porn films that are coming in



increasing numbers into the province and which we are handling, I think, with almost a bottom-line approach.

Our second problem, of course, is that one decision a year involving the commercial art film. Last year it was *The Tin Drum*; this year it was *Beau Père*. In these art-film decisions, we come back to our jurisdiction and our mandate as we see it. Between 15 and 20 per cent of the population are regular theatre-goers. Many of them believe that if a film has artistic merit, it should not be censored. If the end result is acclaimed as art by even one or two film critics, then the means to attain it must be condoned. When major directors are involved, the work is sacred.

In the past three years in over 4,000 decisions, three highly controversial ones were made which launched the full attack by media and art groups: *Pretty Baby*, *Luna* and *The Tin Drum*. In each case, the board's recommendation was based on perceived community concern about the sexual exploitation of a child. In each case a child actor under the age of 16 was presented nude as an erotic object or directed to portray explicit sex acts in order to fulfill their role. Knowing community concern in this regard, reflected in our personal contact, reflected also in independent surveys, reflected in proposed legislation which will hopefully in future prevent this kind of portrayal, the board screened four art movies and noted the following, artistically done or not, this is the way it was:

In the film *Padre Padrone*, the Traviani brothers wished to explore life in Sicily and a 12-year old boy portrayed an act of bestiality with a donkey. Louis Malle explored child prostitution in the film *Pretty Baby*. A 12-year old actress stood naked before the cameras while she was examined as a potential bed partner. It was artistically done.

2:30 p.m.

When Bertolucci wished to study incest in the film *Luna*, a 15-year old boy was masturbated at length before the cameras even though he objected. Jill Clayburgh objected. The director insisted that it be done at length and that it be done real.

When Schlöndorff commented on German society in *The Tin Drum*, a 12-year old actor was directed to portray an act--simulated, granted--but still portray an act of oral sex or at least oral contact with a woman's genital area. Board members who had difficulty in approving these films believed that they represented the community, not in an act of paternalism, not in protecting an adult viewing public, but in reflecting a universal abhorrence to the use of children in this way. Members believed that even in such a diverse community as ours, public entertainment at this cost is unacceptable.

They also had problems based with arguments on artistic integrity, knowing, as we do, we are dealing with essentially a commercial product; knowing as we did that at least two versions of *Luna* had been made with an eye on the commercial market; knowing that Schlöndorff had no serious objections to at least three versions of *The Tin Drum*, the scene that most concerned our board

had been cut without incident in England; and knowing that the former chairman of the Motion Picture Association of America has stated that a large percentage of films that come to their association for rating and do not get the commercial rating they want are taken back and cut by the distributor or the producer in order to get the best commercial value from the film.

Yet, I think decisions on art films will continue to be a problem. Those at the board are sensitive to the concerns of the community as a whole and that is again when we come back to the mandate. Is our mandate to reflect the standards of the theatre going 15 or 20 per cent, or in that federal Supreme Court decision, were they talking about the standards of the whole community?

As a reflective and responsive board, if we are to fulfill that particular mandate, then I think we have to address even art films that go beyond the bottom line in terms of the sexual exploitation of children.

So we keep asking ourselves in the midst of criticism, because we are always in the middle, does the community as a whole have the right to dictate its standards to the theatre going 15 or 20 per cent? I think in terms of the jurisdiction given to us and in terms of our own assessment of our philosophy, if it is in the area of public exhibition, if it has the power to impact directly or indirectly on the community as a whole, I think they do but the other end of our philosophy is as important as the beginning.

If we are to exercise any kind--even a minimal--of censorship function in a democratic system, responsibilities lie with us too. We have the responsibility not to impose our own personal perceptions or values. We have responsibility for an ongoing assessment of community concerns. We have a responsibility to print or make public what we perceive to be the standards of the community, our guidelines which we have done. We have clearly articulated in a brochure which has been distributed in the past four or five months--120,000 copies are out there some place--what we consider appropriate for the different age groups within the classifications and what we normally cut. We have the responsibility to listen if people have objections to those guidelines and to assess them again against the values of the whole community.

We also have a responsibility for public accountability. If, on your behalf, or in response to our perception of your values, we make a cut in the film, we have the obligation to let you know what that cut is and so since January 1, we have been publishing our screening list. We have been listing the films that have eliminations in them and we have been listing the eliminations and they are available at the consumer information centre or at theatres branch on request.

Also, even in assigning the classifications which is very important commercially for the distributor and for information to the consumer, the reasons for the classification too are carefully noted on the full screening report, again which is available on request by the industry, by government or by the public.



Our third concern--the first was the hard core pornography--the second is the commercial art film which transgresses the bottom line and the third concern is appropriateness of exhibition. I know there has been concern articulated by the film art community. We come back to this premise: When we were initiated, we believed that the concern of the public was for films in widespread commercial distribution and the power to impact. The film art community also had problems in wanting to exhibit with freedom in limited context.

I feel most responsible artists have no problem with the board. It is probably a philosophical problem. In any case, we have attempted to deal with this concern by placing more responsibility on curators of recognized and responsible art houses in recommending for exhibition in their particular milieu and to avoid the costly physical submission of films for screening. Quite often in recognized galleries, we have introduced the examination by documentation system.

However, I believe a dichotomy will continue to exist between the struggle for unlimited freedom of expression and a growing concern about the increasing media influence on the quality of life in a given community. I think there will always be an aversion to the exercise of censorship function but I think it will be paralleled by recognition of a need for articulated and representative standards, a bottom line if you will, to govern what is publicly exhibited.

I believe our board is caught at the apex of an emotional struggle between individual freedoms and community concern but I can honestly assure you that within the framework of our mandate, our board serves as reflectively and responsibly and accountably as possible the concerns and the values and the attitudes of the Ontario community.

Mr. Chairman: Thank you, Mrs. Brown. Questions from members of the committee?

Mr. Rotenberg: Can you tell me, as of now, how many members you have on your board and how often they are active in screening films and so on? Can you tell us about the changeover, the makeup of the board, and in a general way the background of the people who are no longer civil servants?

Mrs. Brown: I am a little hesitant about going into personal backgrounds.

Mr. Rotenberg: No, no, I didn't mean that. I meant in a very general way, not a specific way.

Mrs. Brown: I think the contrast would be interesting. When I joined the board, there were five full-time screening members and we screened every day, all day, five days a week and some of you have seen the product. The majority of the product are not major films. We have maybe 300 major films a year. The rest of the 1,765 or so are foreign films or B films or very harsh violent pornography. When you are doing that five days a week, it is almost

stultifying. I found that there was a limitation on the length of time that I could serve in that capacity.

I think the new system is excellent and we are in a transition stage right now. We do not have the full complement. Ideally, I think we should have between 25 and 30 members, each of whom would be willing to screen one day a week. That would give us a screening panel of five members every day and consistency would be maintained by the fact that members were coming in on a regular basis, but it would still give them an opportunity to go back to their own milieu, their own environment, and to keep a foot in both worlds. You can get I think totally immersed in a film world and things get a little distorted as they did for me.

2:40 p.m.

We are hoping, when the board is complete, to have a very good cross-section geographically, age-wise, professional background and lifestyle. Currently, we have the director and assistant director of theatres branch, who are also chairman and vice-chairman of the board. My background is I was a teacher of English and history. I have raised six children, which gives me an opportunity perhaps to have some insight into the classification system, which I keep coming back to and saying that is our biggest job anyway. I also had worked in external affairs at the University of Toronto and had some public relations background.

The assistant director has had a lot of experience in personnel and in administration. She does not screen very much but she actually runs the branch. Of other members, one, I believe, has secretarial background and has also worked in the university environment. Another representative is currently working with a television cable company.

There are two representatives of the film industry which has given us also insight from that perspective. There is a young representative of the--a young woman from the art community. She is an artist and has a background in theatre management and stage, also combined with mothers of families. So I think even with the limited board that we have--I probably have not mentioned everyone--we are getting a good cross-section of--

Mr. Rotenberg: So you have many more women than men--is that true?

Mrs. Brown: No. We have the two industry representatives, who are men. We have five men.

Mr. Chairman: Is Mr. Beattie here today, Mrs. Brown?

Mrs. Brown: Mr. Beattie?

Mr. Chairman: Yes.

Mrs. Brown: No.

Mr. Chairman: Because he is the fellow you have got down as "aged 65, looks 50." We are kind of anxious to see him.



Mrs. Brown: Oh, yes. Secret.

Mr. Mancini: Are you serious about (inaudible)?

Mrs. Brown: I did not say that, but I would if I were asked. Yes.

Mr. G. W. Taylor: I have a few questions, Mrs. Brown.

Mr. Epp: (Inaudible).

Mrs. Brown: Is there a fifth amendment here?

Mr. G. W. Taylor: One question I had flowed out of the people we had here this morning from the film industry. You heard their conversations and information they were providing to us. One was concerning the economic loss they felt was involved in their industry where they felt that videotaped cassettes of major films were being processed through the board and going out for public consumption in a commercial way. Thus they felt that should be some form of legislation to change that. Since you heard the text of their information, could you comment on what the board does with, say, a major film which comes in cassette form?

Mrs. Brown: I am glad to. I was sitting back there. It is very frustrating to be back there and say, "But, but." It was very difficult commercially when we were first approached with these video cassettes. People would come in with something like Black Stallion to be approved for exhibition in a bar or in a lounge.

I was not quite sure, legally, what our jurisdiction was in that regard. I consulted a legal branch of the ministry and they said we did not have jurisdiction to refuse to approve this for public exhibition since our jurisdiction extended only to the content of the film.

Whether or not the content is appropriate for exhibition was the only thing we could comment on. However, morally, I was concerned about the fact that these things were perhaps being pirated. So I want to assure you that within the past year we have not approved any tapes for public exhibition on contravention of copyright and I reassured Mr. Roth about that as he left.

What has happened is, when people bring a video cassette to me now and ask that it be censored for exhibition in a bar or lounge, I take time to explain to them that, "Yes, if you insist, we will give you a certificate saying that the content is appropriate," but they definitely are going to run into copyright problems, that there could be legal action taken against them. I would advise them to go through a legitimate distributor to get their product. Inevitably, the exhibitors have done that.

I had to persuade the industry too. I sat down with them and said, "You must provide a legitimate outlet for people to obtain these video cassettes." Fortunately, there is now a distributor who does have the copyrights for films which are not current, that are, perhaps, five, six or seven years old, which are not in direct conflict or competition with films in the theatres. As I say, we

have not approved for public exhibition any videotapes in contravention of copyrights for the past year.

Mr. G. W. Taylor: But you were not following and you have not been following the line, if I understand it, that they were seeming to suggest, that the board itself should become some type of sanctioning body to preserve their economic rights in those movies, and that we should institute some form of regulation or legislation to characterize that move.

Mrs. Brown: We have. You see, built into the Theatres Act, if they are exhibiting these films without our certificates, they are in violation of the Theatres Act. So if our inspectors go into a lounge and find a videotape which is being exhibited without the certification of the board, of course, would have the power to seize.

Mr. G. W. Taylor: Has that occurred in your time with the board, so that you have enforced that on behalf of those people?

Mrs. Brown: Oh, no. That has always been there. Anything in public exhibition must have a certificate of approval from our board.

Mr. G. W. Taylor: In regard to cassettes though, have you had occasion to enforce this particular situation recently?

Mrs. Brown: On one or two occasions, but usually a warning will do. Our inspectors would warn that they are in contravention of the act if they are exhibiting anything without a certificate from the board. Within the powers of our jurisdiction, we are supporting as much as possible, and actually doing it very effectively, the industry's concern.

Mr. G. W. Taylor: Yesterday, when we visited your establishment there, we had--I do not know whether it was the good fortune; I am sure it was not--to view what are described as the out-takes which, I am sure, on all of us left a very vivid impression. One would have to--and I did not ask the question at the time--would have to come to the conclusion with all of the people who work on your staff, that there must be some reluctance to view those films.

I guess we come into another area, is there sort of developing--and I can put it in a more precise question--is there developing that you might be a little reluctant to put those on to view them and they might get down to the bottom of the list? Or do you have a procedure whereby when they come in they are done and everything gets done in a chronological order upon receipt?

Because I know, if I happened to be a censor, that might keep getting to the bottom of the pile. Do you have any enforcement or procedural method of saying to all those who are supplying you with films that, "Yes, they will be done in accordance with their time of receipt"?

Mrs. Brown: Yes. We are in the process of updating our internal procedures right now, the actual flow of the film. But it



has been unfortunate. We do have to accommodate the distributor on a first come, first serve basis, and sometimes we get five or six heavy pornographic films in a row, which is very hard on the board members.

But with the new screening procedures--I have more detailed copies of those, by the way, to distribute--we can, hopefully, alternate the screening panels. So if we have maybe five pornographic films in a row, we can alternate the panels so that the same person is not viewing. Is that what you meant?

Mr. G. W. Taylor: Yes.

Mrs. Brown: Yes. This is viewing five in a row.

Mr. G. W. Taylor: Right and that they are not getting put down to the bottom of the pile, unfortunately.

Mrs. Brown: No.

Mr. G. W. Taylor: Another feature you mentioned in your discussion yesterday and today, in general words, the impact on the community of a particular film and you thought that was part of your mandate--am I correct in stating that?

Mrs. Brown: Only as perceived by the community to impact. I do not think we can make that judgement.

Mr. G. W. Taylor: Then we get into that area, and Mr. Epp raised it in conversation this morning which you heard. We discussed it somewhat yesterday. When it impacts and there is sometimes a causal relationship or there is noted to be evidence of a causal relationship of the impact of a film, and we know many films are done for the message on the community and they are intended to impact the community.

The Deer Hunter was used as an example where they consider a causal relationship between the Russian roulette or the roulette game played and its impact on the community and it did cause some harm. When you say they would impact on the community, would you feel that the mandate of the board, that part could be eliminated where you might say that is definitely going to have an impact on the community, on some people, or do you phrase it in another way, that impact on community?

2:50 p.m.

Mrs. Brown: Maybe I should not be speaking for the board on this, but I feel if I were to sit and see that film and say that might affect someone, therefore I will prevent its being shown, that this would be an act of paternalism and really not, and I think almost a betrayal of our mandate. The only way I could be justified in requesting elimination of that particular scene or any kind of restriction on that film would be if, in my contact with the community, I perceived a community concern in that area.

Mr. G. W. Taylor: Using then the example of The Deer Hunter, and there have been suggestions there is a definite impact

and a relationship between the film and something that may take place. If something came up very similar to a future film, could you say that now was going to impact on the community and we would get the scissors out on that one?

Mrs. Brown: I might because a lot of people have mentioned to me their concern about The Deer Hunter. I might personally vote to eliminate a similar scene because perhaps enough people in the community now have articulated their concern. If that concern had been reflected to other board members, that might be the vote.

But it would have to have been not just my reception of an impression from the community, but whether or not it had been reflected on other members of the board. Because if you are going to take a major film, an important film, or any film I guess, and exercise a censorship function, again, it has to be done not by one or two, but after serious consideration by a full board. It is a very heavy responsibility I think, that act of censorship.

Mr. Chairman: Certainly you would have to consider the scene itself, the importance of that scene to the movie, to the theme of the movie.

Mrs. Brown: Whether or not its importance to the theme of the movie or its importance to the community is a problem, I think the community concern would have to take a priority over the artistic integrity of the movie which we dealt with before in some of the other films.

Mr. Chairman: Some of the other ones where the scenes were banned, some of the ones you have mentioned, were really not that important to the theme of the movie or the sense of the movie or what the director or producer was trying to portray. It was just additional incidents or scenes. In The Deer Hunter, that particular scene involving the Russian roulette contest between the Vietnamese and the American soldiers was almost central to the theme.

Mrs. Brown: It is interesting, though. You are talking about a scene of violence and I think quite often the board members have felt, at least I have, that scenes of violence are intensified by being prolonged or repetititive. Perhaps if someone were going to deal with such a scene from The Deer Hunter and were seriously concerned about it, they would suggest shortening that scene. That sequence was very long. It would not necessarily take the heart out of the picture by maybe shortening it if you were worried about it.

This is important, too, that scenes are not usually eliminated from a film. They might be shortened. Certain camera angles may be taken out. For example, in the film Luna, the masturbation scene was not cut. It was not eliminated. A close-up camera angle of a prolonged act of masturbation was shortened. This is important. You do not remove scenes that are going to tear a film apart. It is not necessary, I do not think.

Mr. Chairman: The four films you mentioned involving children, they were not banned, there were just certain cuts made.



Mrs. Brown: Pretty Baby was rejected and not approved for public exhibition.

Mr. Chairman: Oh, really. I see. But the other ones were certain cuts that the producer would not accept or the distributor would not accept?

Mrs. Brown: They were accepted. In The Tin Drum, the scenes of most concern to the board were addressed by the distributor.

Mr. Chairman: Why was it not shown in Ontario?

Mrs. Brown: It was.

Mr. Chairman: Pretty Baby was?

Mrs. Brown: No, The Tin Drum.

Mr. Rotenberg: There was a period of time when there was a controversy over whether they would or would not cut it. That was what all the controversy was about and they ended up doing in the end what they should have done in the first place.

Mr. G. W. Taylor: Did we see the cut portion of those out-takes yesterday in The Tin Drum? It was on the out-takes we saw yesterday?

Mrs. Brown: That is right, but it was obvious, if you were to see the film, you would know exactly what was happening. In other words, what came out was--

Mr. G. W. Taylor: Could I lead back to the chairman. Not having seen the entire movie and not wanting to see it either, I cannot in any way imagine that, having removed that section from the film, any harm whatsoever was done to the artistic or any feature of that movie whatsoever with that segment taken out, or even with it in. I cannot in any conscience, imagination or anything else, see there would be any difference in that movie whatsoever. I think that is what you were leading towards, Mr. Chairman.

I have one further question. When you deal with films, there are many things you do, basically in your classification system. Everybody jumps towards censorship and I sometimes try to look at different forms of publication, be they books, radio, TV or otherwise. I guess I always come closest to something about which the general public never seem to get themselves greatly concerned, and they call it a licensing feature. I think sometimes we have a far greater licensing yet censorship feature in the radio and TV area. This station will be a rock station, this will play adult rock, and this will be so and so. I never see any arguments in the print media or by them that this is in any way censorship.

I sometimes find that and I do not know how you would feel, even if you get it from those same people who are usually attacking the board in regard to censorship. Are those arguments ever applied in any other form, saying this generally takes place, your licence

is pulled or this happens? Suppose you were to be a very strict licensing body, rather than a clipping body. Do you ever find those arguments when you go out to the numerous public forums where you debate on it? Is that argument ever raised?

Mrs. Brown: Basically, we have a licensing function. To say we ban a film, for example, is an error. We do not ban films, we just do not issue a certificate for public exhibition. I think there is a difference, because if something is banned in the province then you take legal action even for private exhibitions and so on.

I think Not a Love Story is a case in point. This film is appropriate for small group discussions and so on. In the opinion of the board, unlimited distribution through the major theatres was not. Certainly to say we have the power to ban something is a misnomer, I think. A licensing for public exhibition is quite different.

Mr. Mancini: I think we are playing on words. If we say we are not going to license a film for public exhibition but we are not really banning it, I think that is a play on words.

Mrs. Brown: I do not think so. For example, if you want to see Not a Love Story, you can borrow it from the National Film Board library, no problem. To ban it would mean it could not be shown in the province. That is not true.

Mr. Mancini: Well, another problem I am starting to have with the censorship debate we have been having now for the past two days is it appears a sophisticated, artsy group can get a special publication licence, but not the general masses. I find that highly offensive. But anyway, if we are talking about censorship, if it is not good enough for the masses, I don't know why we should be pretty well--

Mrs. Brown: Oh, no. It is a question of the appropriateness of exhibition again. There is an appropriate place for everything.

Mr. Mancini: You may be able to explain that to your own satisfaction. I heard this yesterday and I am hearing it again today. I know you are doing a very good job explaining it, and I am not really challenging your explanation. I am challenging the principle of it.

Mrs. Brown: I am talking about the principle of it. You are suggesting it is elitist and it is not.

Mr. Mancini: It certainly is.

Mrs. Brown: Everyone has access to the Art Gallery of Ontario. You have access to it, and so have I or anyone who wishes to go there has. Admission is not restricted.

Mr. Mancini: Well, after being a representative for a good number of years, I have found that what some people consider to be available to all the people is not necessarily so in the real



world, and this particular subject we are discussing right now is a case in point.

3 p.m.

Mrs. Brown: I see.

Mr. Robinson: When it comes right down to it, the most undefined area in which you operate is what is called community standard. I know it's the thing that gives you and your board members the greatest measure of difficulty. I also note at the outset that in our examinations of a variety of boards and commissions, yours is the one that has received the greatest amount of client support of any of the ones I have been involved in. I would, for the record, certainly offer you our congratulations on that.

When you took over as chairman, how did you, your new board members and the old board members go about determining the contemporary community standard?

Mrs. Brown: When I first joined the board, you mean?

Mr. Robinson: Well, yes, all right.

Mrs. Brown: I don't think they did.

Mr. Robinson: How do you measure community standard then? What do you use as guidelines? How do you keep in touch?

Mrs. Brown: I just explained that through (inaudible). We have already written down our standards for what is appropriate for family. Our standards for what is appropriate for parental guidance are in that brochure--

Mr. Robinson: I realize that. I think you may be missing my point.

I would suggest to you that community standard is an ever-changing, flowing, moving, different kind of thing. I would suggest that, at certain periods during the twentieth century, community standard may have stayed the same for a 10 or 15-year period, and then, within two or three months, it is completely different. It happened in the 1920s, again in the 1940s, and it happened in the 1960s. How do you maintain track of that? How do you make sure on a normal day-to-day or month-to-month basis that what you consider to be community standard across the broadest spectrum of Ontario really still is?

Mrs. Brown: I think what has happened in the past month is going to continue to be a pattern. I think all members of the board are most enthusiastic about maintaining their liaison with their peer groups, to have ongoing discussions about ongoing decisions on films. We will have to meet at least every six months as a full board to review our existing guidelines, to assess them against what we have personally found, and to shift, adjust and reassess, if indeed the community is shifting.

Mr. Robinson: On the basis of your recommended eliminations, when you identify a particular scene under the heading of being pornographic and it is inappropriate, unacceptable, unnecessary, or whatever, do you as a board at some time meet to decide universally exactly what views, what camera angles, what factors, would control what is eliminated?

Mrs. Brown: What camera angles? No. The things that are normally not approved are on the back of that pamphlet.

Mr. Robinson: Yes.

Mrs. Brown: But we have also said that each film has to be judged on its own merit and sometimes it's not a specific scene that is a problem, but the scene within the context of the scenes that precede and follow it, particularly in violence, which is the thing we are addressing now.

Your experience yesterday, which was probably horrendous, was not just because of the explicitness of the scenes of violence but because of the cumulative effect of one after the other. One scene of violence in one film, juxtaposed between scenes of comedy or whatever, could be quite different in another film, which is an ongoing film of increasing horror. You can make your general guidelines that are normally applicable, but you can't get any more precise than that, because you have to have the flexibility to deal with each film as an entity.

Mr. Robinson: When you are trying to make specific judgements on violent acts, is it a quantity of things? Is it the quantity of the violence, the length of the violence, whether it goes on for a period of time, the quality of the violence, or does it depend on how much damage the violence is occasioning on the individual? Is it any one of those or is it all of those?

Mrs. Brown: Probably a combination, and again the context.

Mr. Robinson: I will try not to lead you, but is the context almost more important than the act itself?

Mrs. Brown: I think it's the impact on you, your response to the particular scene.

Mr. Robinson: Let me offer you one comment about yesterday. I don't know if other members shared it as well. It may not have had the profound impact on me personally you suggest, having seen a good deal of it in real life, seeing it in a cumulative way may not be quite the same. But let me ask you this. Does it have a greater impact in your view, when over a period of a film, you felt some affinity for the individual, who is ultimately tortured or somehow ultimately abused, as a person or as a personality? Is that where the impact really comes?

What I found yesterday was that, yes, dealing in a humanistic way with individual human beings at a very rapid rate, one after another, the inhumanity of it strikes you, but there isn't the same feeling that it is happening to someone you know or someone you've



gotten to know over the space of the film or the development of a personality on the screen. Is that really what context is all about, rather than just a raw act itself?

Mrs. Brown: I think it is a subjective thing. I can't speak for the other members of the board, but I know I came in near the end of the film this week and in the final scene the obvious villain was slowly crushed against a wall by a car. Now, obviously, I didn't know him well, although he was clearly the villain, but that scene was very violent to me and excessive. I had a great reaction against it. So, I think you are talking about something very subjective, what within a scene or a film would affect my particular vote on it.

Mr. Robinson: Looking at the guidelines that you have for elimination as they relate to violence, I will just try to deal with those very simply--"very graphic or prolonged scenes of violence, torture, blood-letting," and it goes on from there to portrayal of sex, violence, et cetera. Have you identified through your contact with the community that the community is not prepared generally to accept that as a standard for public exhibition?

Mrs. Brown: Yes.

Mr. Robinson: Can you tell us for the record, and you went into some detail on it yesterday, how you arrive at those conclusions? Is it done by survey? Do you do it individually? Do you poll? How do you draw those conclusions?

Mrs. Brown: Quite often, when speaking to a group, they will bring up specific scenes or movies to which they seriously object. Inevitably they are violent movies. In some of the high schools I visited, the students were interested enough in the subject, and after they had listened to me, they devised their own questionnaires and circulated them throughout the high school. That was interesting, because I find that where the initial reaction is, "I don't want to be told what I can or cannot see," once the students were very aware of the product their response was very supportive.

They may have different concerns than I have. They are really concerned about violence, not too concerned about language, not too concerned about nudity or sex between consenting adults. But violence, the sexual exploitation of children, even in the Pretty Baby context, very much concerns them. I found it very reassuring that support for what we happen to be doing is very strong among high school and young university students. Once they understand the product and our approach to it, the support is very strong.

Mr. G. W. Taylor: Following that up, the same scenes we watched when you were talking about pornography and violence, the woman who was boiled alive in the bathtub--I don't know whether you saw the full movie--what would have preceded or followed that?

Mrs. Brown: The horror of that scene, I think, was what preceded and what followed. That was the same film in which the women were hung upside down on the barbed wire fence, when they had the--

Mr. G. W. Taylor: --meat hooks on the rack.

Mrs. Brown: Yes.

Mr. G. W. Taylor: That was all part of one---

Mr. Rotenberg: It was continuous violence. It had nothing in between.

Mrs. Brown: This was Prisoners of the SS or something.

Mr. Rotenberg: People really go and see that?

Mrs. Brown: Yes.

Mr. G. W. Taylor: Worse still, somebody produces it.

3:10 p.m.

Mrs. Brown: Somebody acts in it.

Mr. G. W. Taylor: Acts, produces, the whole package.

Mr. Robinson: Could I ask one final question? Just a simple one, I think. When the censor board has come under considerable pressure from the media, as it relates to acts of censorship itself, has the board ever gone into any sort of outreach program to invite the media in to have the same sort of experience that we had yesterday?

Mrs. Brown: No. As I mentioned yesterday, I do not enjoy showing those out-takes. I think it is a violation of people. However, when I do read an editorial in a newspaper that I feel is misinformed or has distorted something, I usually contact the writer and say: "Would you like to come down and visit this theatres branch? I would like to explain how we do things." I have invited many media people to visit us at the branch, so I can go over the guidelines and show them that the information is accessible to them on anything we are doing.

I have done well over 100 interviews with media people. I try to do them off the record so that they can be informed as a background for when they are covering specific issues.

Mr. Rotenberg: Do most of them show up, when you ask them?

Mrs. Brown: About 50 per cent. The thing is if there is not an issue they are not interested, and if there is an issue it is too difficult and too emotional. The time when I most like to have the media there is when there is not a particular issue and we can provide them with a background and an understanding of how we are functioning, so that when a specific issue does come, maybe they can better understand why a certain decision was made.

Mr. Robinson: Maybe you might like to consider it at a noncontroversial time, as we seem to be in now--



Mrs. Brown: Is there ever one?

Mr. Robinson: I was using your own words, whether or not it might not be appropriate to try to make some arrangement, either for the press gallery here, or representatives of the major media in the province, to give them the benefit of that insight.

Mrs. Brown: Maybe people of the media will recognize that again this censorship function requires public accountability, and our board has always been available, or as often as possible it is available to the media. If I have a call from the media, I return the call within hours. We have always tried to be available and accessible to the media whenever they want to contact us.

Mr. Watson: You have made quite a point of talking about the 96 per cent of the time, or things that you do in classification, yet you are known as the board of censors.

Mrs. Brown: I know.

Mr. Watson: Have you given any--do you have the right name?

Mrs. Brown: I have a name that I like. I keep saying if the thrust of our board has changed, and I think it has, because we place as much emphasis on researching what the community concerns are as we do in applying a classification and a censorship function. We have established clear standards for exhibition and clear standards for what is appropriate in each of the classifications. I would like us to be known as the film exhibition standards board.

Exhibition, because that emphasizes the fact that we are only concerned with public exhibition. We are only concerned with film. Our main responsibility is clearly to research and publish the standards by which we approve films.

Mr. Watson: You would have to have a change in legislation to have a change in name?

Mrs. Brown: That is right.

Mr. Watson: So you are suggesting that perhaps we, as a committee, should consider--

Mrs. Brown: I would not presume, but it is a better description of the board to call it a film exhibition standards board, because, conditional on the film conforming with the standards, then it is approved. If you want to take it to a practical level it is like your technical standards branch. If a refrigerator or something conforms with standards for public use, or public sale, or public distribution, then the certificate is issued. Perhaps that is a distortion of our function.

Mr. Watson: One of our functions is that if we prepare a report, we might give it consideration. Do you have any second choices?

Mrs. Brown: I do not know. I just think that the emphasis--

Mr. Watson: The one I would think--I was not thinking of it there, but the Ontario board of classification might be more suitable from what you have told us, but you have a different one. I just wondered whether or not you had any second--

Mrs. Brown: Ninety-six per cent of what we do is classify and approve film.

Mr. Epp: Have to get a rural term in there, eh, Andy? Something like farmer's film exhibition standards board, or something like, that would do.

Mr. Watson: Could be. That leads me to another point that I wanted to make. Do you find different community standards within different parts of Ontario, in urban and rural sections?

Mrs. Brown: Not really, because the classification parameters, the content for each classification, have been well received in small towns and large cities. The things that are normally cut, the child exploitation, and the violence, and the sex and violence combination, are pretty universally accepted by the majority in each of the communities.

Mr. Watson: What I am thinking about is what might be acceptable on Yonge Street here might not be acceptable out in some of our smaller rural cities in Ontario.

Mrs. Brown: That is distribution. We are talking bottom line if we are talking censorship. The distributor of the film, if he thinks that something might be appropriate, for example, for the Coronet, or the Rio, may not take it to Fenelon Falls. I do not know, but that is a distribution decision.

Mr. Watson: We were told yesterday the reason that we travelled out to where you were is because in times gone by they were afraid of fire with films, and so forth. What about facilities? Are you satisfied with your facilities? Is the location all right? Is the amount of space all right? It seemed to me some people were working in a hallway, or something.

Mrs. Brown: I find that the facilities are excellent. There is no waste space. The offices are adequate. The screening room, as you noticed, was adequate, not only for the board but if we need to have panels come in.

We have facilities for screening 35 millimetre, 16 millimetre and videotape. The office space accommodates also all the licensing function of the theatres branch. We have facilities for the examination of projectionists and for the licensing function, and as I mentioned yesterday, the records for the 200,000 films that we have.

As you probably observed, it seems to be just right.



Mr. G. W. Taylor: It seemed very crowded to me. You are a pleasure to hear. Most other government organizations would be expanding or yelling to be expanding at the seams. At least you are working--

Mr. Watson: I kind of got the idea that when you got these machines with the little things, you stuffed each one in a corner someplace so that it might be--

Mrs. Brown: Oh, the Intercines; they would be used only by two people and that works just fine.

Mr. Watson: It may have been mentioned earlier, what is the time limit? If a person brings a film in, what is the turnaround time limit?

Mrs. Brown: We say that the longest time required would be five days. However, in dealing with some of the major distributors, we sometimes are on a 24-hour basis. We always meet their deadline. Five days would be the longest time.

Mr. Watson: In your activities with the board, you wear two hats.

Mrs. Brown: Yes.

Mr. Watson: Can you give us an idea what your time spread is, or do you consider it all one?

Mrs. Brown: I spend very little time screening the films. Most of my time is in administration, in research, in community contact, in policy development. I try to screen once or twice a week, but most of my work is overview, co-ordinating, researching, and conducting meetings with the board, and with the public.

Mr. Watson: We have had discussions about reviews, or that if people are not happy with one, they can get another run at it--appeals. Do you sit on that appeal board yourself, if one came through for appeal?

3:20 p.m.

Mrs. Brown: I might screen a film. If I happen to be in the screening room when an ordinary film comes in on an ordinary day, I would screen and vote on the film. If a film came in on appeal, under the new procedures it would be by a five-member panel totally different from the first one. I may or may not, depending on my time.

Mr. Watson: I take it we have two people and I guess the other one doesn't do much screening. You mentioned the vice-chairman does not do--

Mrs. Brown: The vice-chairman might come in on a very major or controversial decision. When it came to the films Not a Love Story and Beau Père, which were going to be very controversial, we tried to get every single member of the board to see it and assess it.

Mr. Watson: So you do not necessarily just go to five if it is one of those that is going to be a controversial issue.

Mrs. Brown: That's right.

Mr. Epp: How are members usually chosen, Mrs. Brown? You have 13 members now and you exclude yourself from most of them. Do you draw their names out of a hat or do you select them? How do you determine who sits on which panel? I know you choose five other ones for the review if there is a review, but how do you choose the first five?

Mrs. Brown: We schedule a month ahead as far as the board members are concerned, or we are trying to. Since some board members travel from out of town and some have other jobs, when they came on board we said, "What day is convenient for you?" So board members would be scheduled a month ahead.

For instance, some would come in every Monday and some would come in on a Monday or Tuesday. Anyway, the panels are scheduled a month in advance. The product comes in the back door and whatever panel happens to be there screens that day's. You do not schedule specific people for specific films.

Mr. Epp: That's what I was getting at.

Mrs. Brown: You can't do that. The product is coming in constantly and your panels are scheduled a month in advance. In other words, there is no way a chairman could manipulate or schedule in such a way as to try to promote or to stop something. That would probably be a concern. It is not physically possible even if one wished to do so.

Mr. Watson: Who does that scheduling?

Mr. Epp: I was wondering about that, because if you were scheduling today and you said: "Tomorrow this film is in so we will just put these five people on. We know that film is a controversial one and these people are fairly conservative, small "c," or fairly liberal," that type of thing.

Mrs. Brown: It is just not possible.

Mr. Watson: Who does the scheduling?

Mrs. Brown: The assistant director and the office manager usually.

Mr. Watson: Perhaps I got the wrong impression yesterday, but I got the idea that not everybody liked watching the Chinese films.

Mrs. Brown: They are very good about it. We try to break it up. The Indian films also are very lengthy. As I mentioned yesterday, some of them are 18 reels; they are very lengthy. We try to split the panels each day so they are not inundated either by a long string of pornography or a long string of Indian films.



Mr. Watson: When you start a film, do you run it to its conclusion? Do you stop for lunch or coffee breaks?

Mrs. Brown: That's up to the screening panel.

Mr. Epp: They get popcorn in the theatre.

Mr. Watson: Is it up to the screening panel?

Mrs. Brown: Yes, it is up to the screening panel. I would assume that they would screen a film in its entirety. Sometimes that is not possible. Sometimes when you have a heavy screening schedule, you start screening at a quarter to nine, you might complete a film by 10:30 or 10:45, start another one at 11 o'clock and you may have to break for lunch.

Mr. Robinson: Could I ask a supplementary on top of that as well? What do you do with foreign-language films? You have a warning under your new system that some language may be offensive. If a film is entirely in a foreign language, how do you make a determination on that or do you just not bother?

Mrs. Brown: Most foreign language films do have English subtitles if they are in distribution in Canada. Italian films usually do not and there is a problem sometimes. We would not issue a language warning unless we were sure it was required. But if you screen films all the time, your visual is usually--

Mr. Mancini: I can give up a day a week.

Mr. Watson: Would \$85 a day be enough for Mr. Mancini to come and work for you?

Mr. Chairman: That's more than he gets here.

Mrs. Brown: I might need hazard pay.

Mr. Watson: It would be worth it to us. That leads me into that aspect of your board. Are the rates set by the board, by the ministry, or by order in council? Where are they set?

Mrs. Brown: They are not set by the board. I think there is a standard rate, is there not, for boards and commissions? Our ministry I think is governed by that.

Mr. Watson: What about expenses? Is that a per diem allowance for expenses or actual expenses?

Mrs. Brown: There is a policy in the administrative manual that if they are travelling from X number of miles outside the city, then they are entitled to a travel allowance and they are on what is called travel status.

Mr. Watson: So that does not come as a recommendation from you or the board, it comes from--

Mrs. Brown: That's correct, from the ministry, from the finance department.

Mr. Watson: In the matter of money, I read somewhere that you recovered 97 per cent. What do people pay to have their films screened? What kind of dollars are we talking about? Is it according to the length of the film? How is that arrived at?

Mrs. Brown: It is according to the length of the film, on the footage. It is \$1 per 100 feet or roughly \$1 a minute for the first copy. Films in major distribution might have 50, 60 or 70 copies. So the major cost would be for the original screening, then there would be a minimal charge for subsequent copies for processing of the documentation and so on.

I don't know the reason for it, but when I came to the branch they were charging the same amount for the first eight copies as for the first copy, which did not seem reasonable to me. A proposal has now been put forward that a fee of \$1 per minute be charged for the original screening of the film, and that all subsequent copies, beginning with the second copy, be \$15 for certification.

Mr. Watson: I guess this is where you get into the two hats bit. Is that a board decision or is that your decision as director of the theatres branch?

Mrs. Brown: That would be a decision by the director of the theatres branch. That is administrative.

Mr. Watson: So the board really has nothing to do with administration.

Mrs. Brown: No.

Mr. G. W. Taylor: That would be covered by a regulation, wouldn't it, the fee schedule?

Mrs. Brown: It would have to be a change in the regulation and the fee structure.

Mr. Rotenberg: It would have to be approved by the ministry or by order in council.

Mrs. Brown: That's correct. I would draft a proposal, the proposal would go to policy and planning, through finance, to the minister and then to Management Board.

Mr. Watson: You license projectionists. Is that where the ultimate control lies? How do you know that the cuts you have made are not put back in?

Mrs. Brown: It would be a contravention of the act to alter in any way a film that had been approved. The person exhibiting it or the projectionist projecting it could be charged.

Mr. Watson: Does the projectionist who is projecting it know that it has been cut? If I am a projectionist, you give me a licence and that licence is fairly important to me. I want to obey all the regulations because I don't want you coming along saying my licence is cancelled. I am really asking for information. Is that



how you exert your control, or do you do it with inspectors? You or somebody else mentioned they were out visiting bars trying to see whether they were showing movies or not.

3:30 p.m.

Mrs. Brown: Within the theatres it is usually the inspectors who routinely check a film to see that it has either been stamped or has the certificate with it and the proper classification to ensure that the age requirements are being observed in the theatre itself. The projectionists are the greatest help outside the theatre context, where they have been called in to exhibit a film to a group, sometimes in contravention of the act, a film that has not been approved. Quite often we will get a call saying: "This is the projectionist at such and such an auditorium. I have here a film that does not have a stamp or a certificate on it. Have you approved it and should I show it?"

Mr. Watson: So a projectionist who shows a film that is not stamped--

Mrs. Brown: Is in contravention of the act.

Mr. Watson: But it really then is under your hat as director of the theatres branch that you deal with that, and the censor board would not be involved in that--

Mrs. Brown: The board makes a decision on classification and treatment of the film, but I guess the monitoring for observance under the act would be the responsibility of the director of the theatres branch.

Mr. Watson: How many inspectors do you have?

Mrs. Brown: There has been a shift lately. The Liquor Licence Board of Ontario inspectors also inspect the theatres. I think maybe four or five have been assigned. There has been a shift. I think some of the LLBO inspectors have gone over to the fire marshal's office. I am not sure how many.

Mr. Watson: There is an organization that keeps writing us letters, FAVAC, something to do with opposing censorship. Did you have any comments about their input? Have you met with them?

Mrs. Brown: Yes, I have met with Anna Gronau several times. As a matter of fact, the introduction of the examination by documentation was initiated to assist Anna, who was operating on a very small budget and was having physical difficulties in sending the films up to the branch. Most of the films were experimental art films and noncontroversial, certainly not a censorship problem. However, there is such a vague division between film as an art form, and art films and commercial art films.

If you are exhibiting film to the public I think there are standards that must be met and in 99 per cent of the cases it is not a problem, whether it is an experimental art film or a commercial art film. It is not usually a censorship problem. I think what FAVAC is concerned about is the principle. We have done

everything we can within the act to be flexible in terms of the particular milieu, the particular form of film which they are using, which is quite different from right now. Most of what we are seeing is different from what is playing in the Famous Players theatres.

Mr. Watson: In summary, we talked, I started with sort of the name and you immediately had a suggestion for me. There have been a lot of changes in the last few months. Are there any other changes from a legislative nature that you think we should be looking at?

Mrs. Brown: No, I do not think so. We can function now within the parameters of the act if it has its second reading and has approval.

Mr. G. W. Taylor: May I have one question on that because I have considered numerous times, knowing what they have in England, suggesting either a private member's bill or some piece of legislation that prohibits either the distribution or manufacture, in all phases, of products that involve children being used. I know they are referred to as the English cuts, but England actually has a specific law, I understand, prohibiting distribution, production, showing, the whole package.

Considering we have all the other legislation in place, should we have, and would it be appropriate, and would you even suggest a particular law against--let us put it boldly--child pornography or the use of children in movies in all phases? Should that be a direction our legislation should take?

Mrs. Brown: This is, I think, the best illustration of a point that I can make. People who argue that the Criminal Code is adequate, the Criminal Code is much behind where we are and that are we concerned about the use of children in this context should be reflected in legislation. If it were reflected in legislation, we would not have had a Tin Drum. I think if the Criminal Code and a legal articulation of what the community considers important is effective, then it is going to deal with the use of children in this area. It has to, if it is responsive and if it is really listening to the community concerns.

Mr. Watson: Is that going to solve anything, because are you not just going to be arguing then what is sexual exploitation?

Mrs. Brown: That is pretty explicit in the industry. It certainly covered the Tin Drum, and they said it would have covered Taxi Driver too, I believe.

Mr. Rotenberg: Going back to your public perception, my feeling is--and I am not a regular moviegoer--there has been a dramatic change over the years in the standards as far as the broad term of sex on the screen is concerned, and probably a very dramatic change in the past few years. I have seen things in the movies in the last few months that even three or four years ago I would not have dreamed of seeing. I think the biggest change was that back in the 1940s you could not have a double bed in a movie.



Probably that is a major breakthrough when you can show a couple in a double bed.

Am I correct in perceiving that there is a major change in what is being allowed today, from the point of view of sex and nudity and language and that bag, than there was even two or three years ago?

Mrs. Brown: Not major, no. I think there is a shift. The change is that I think we are more conscious of and more sensitive to violence.

Mr. Rotenberg: Leave the violence alone for a minute. I am just talking about the--

Mrs. Brown: I do not think there has been too much change. In the last two or three years there has not been a radical change as towards sex.

Mr. Rotenberg: Is there not a lot more nudity?

Mrs. Brown: Maybe the change is that it is coming out of the foreign theatres. As far as the board's application of a censorship function is concerned, it has not changed that drastically in three or four years. But what has changed is that it is coming out of three or four theatres in downtown Toronto and it is going out into the suburbs. As I mentioned yesterday, the Naughty Victorians played at the Park Theatre, but that kind of film had played for the past 10 years in a downtown theatre.

Mr. Rotenberg: In other words, what has been in Cinema 2000 is now in the major theatres. Putting it another way, the major film aimed at the mass market is now doing things that the porn films were doing before, but your standards have not changed.

Mrs. Brown: That is right, I think so.

Mr. Rotenberg: That also reflects somewhat in community acceptance, maybe not from your point of view, but the major producer would not be doing it if it was not available.

Mrs. Brown: That is right. That is why the scene in the Postman Always Rings Twice, and in Bad Timing, was quite a breakthrough in a major film.

Mr. Rotenberg: I am not familiar with the scene. Has there been the same shift in violence as there has been in sex in the major movies? Is there more violence coming? I avoid violence movies, but is there a trend in violence movies, more violence and more explicit violence? Have your standards changed or is it just coming out of the Yonge Street theatres into the major theatres? Has there been a shift?

Mrs. Brown: No, I think the pornographic films were dealing mostly with sex and a little violence. Violence has not emerged through pornography so much as it is all of a sudden in major production. Again, I go back to Peckinpah. I think he introduced explicit violence, so it did not come in through the

back door through pornography. It came right on the full screen.

Mr. Rotenberg: Which picture was that?

Mr. G. W. Taylor: He did Straw Dogs. He did a western too.

Mr. Rotenberg: Has there been a change in your standards?

Mrs. Brown: There has been change in production standards. We are now getting a lot of films with excessive violence. It took some time for the public to react to it and now they are, and they are very much concerned. I think the board's response is going to be tightening up, first of all in what it is permitted in the different classifications in terms of explicit violence. If the public reaction continues, then an act of censorship may be applied to excessive violence even in the restrictive categories.

3:40 p.m.

Mr. Rotenberg: I accept what you said, that you have to reflect community standards, but maybe I can sort of reflect my own standards. I am far more concerned with violence on the screen than I am with sex on the screen. For instance, if two adults want to do something and other adults want to watch it, what the hell; that is not so much our concern. But I really am concerned with some of the excessive violence on the screen. I gather what you are saying is that there has been some public reaction to excessive violence.

You have categories which are really based on age of people watching and you have the little warning thing that is a little different. Even for mature people like me or adults, have you thought of categorizing a film with a little warning saying "excessive violence," "excessive sex" or "excessive nudity" so that you don't have to read the small print. If it is right in the category one would know that if one wants to avoid violence--and I personally would--one should not go to that movie because it is within the restricted adult category or even in the general category. You may have "restricted" and then some other letter as well, such RV, which would mean it is restricted with violence or something like that right in the category. How often do you use your warnings and how bad does it have to get before a warning goes on it?

Mrs. Brown: The board has discussed this, and obviously if you restrict a movie it is because of heavy content in some area. Either it is restricted because of explicit sexual activity, it is restricted because it is very violent or it could be a language problem. More and more we are putting information captions on which would indicate why it is restricted. There are some people who don't mind nudity and explicit sex, but they might be very much turned off by violence, or there are some people too who are offended by an undue use of four-letter expressions. I think that kind of information should be on it.

Mr. Rotenberg: How are you putting that information on? Is that your little warning?



Mrs. Brown: "Offensive language," "explicit sex" or "scenes of violence."

Mr. Rotenberg: That isn't the warning, is it?

Mrs. Brown: That is the warning.

Mr. Rotenberg: What I am suggesting is that you upgrade that warning into being part of your category, such as RV, for "restricted because of violence," or "restricted because of sex" or something else.

Mrs. Brown: Not unless we change the act again.

Mr. Rotenberg: Oh, I see.

Mrs. Brown: We have the four categories now and--

Mr. Rotenberg: That is in the act. Then is there a way that you can upgrade or change the warning, print it in a little larger print, because it is pretty small print that we miss from time to time?

Mr. Breaugh: Get new glasses.

This is a little ironic. Yesterday I was a little nauseous about abuses of sexual habits and violence and today I am getting a little nauseous about the wonderfulness of censorship. I haven't heard an ill word said all day, which causes me to flow against the stream.

I want to go into a couple of other areas that we haven't put much attention on. It relates to material which you either showed us yesterday or which you gave to us and I had an opportunity to look at overnight. One of the most dramatic things which offended me yesterday in your little outtake film was the very first one, which was straight raw violence.

It strikes me that my hero, Randolph Scott, shot a lot of folks but he never hurt anybody. All through my childhood I watched him shoot people up, but nobody ever bled. A couple of guys staggered around occasionally, but they always got up off the ground I am sure because I could see they were not hurt. The film I saw yesterday showed somebody punching somebody else in the mouth, and with the techniques of the camera, he went at it at great length.

While it really offended me yesterday as I watched it, I got to thinking about it on the way home in the car and I thought, "I wouldn't pay cash money to watch that, but maybe that is a better way to portray violence because there isn't a nice way to shoot somebody." If people are going to get shot and you are going to portray that on the screen, then perhaps that ought to be accurate, not pleasant.

How much of that argument happens at the censor board? Nobody wants to watch it, just as I don't want to watch somebody get punched in the mouth. Having done it and received it, it isn't

pleasant and I would really rather not. But if you going to portray it, then perhaps it ought to be portrayed in that way. Do you have those arguments at the censor board?

Mrs. Brown: Yes, we do--or discussions--but it always comes back not to personal or subjective judgement, it comes back to, as in the Malamuth and Donnerstein study, whether people are really aware. Do they think this kind of prolonged portrayal of violence is going to generate violence on the street? A lot of people seem to think it would. If we feel enough people feel that way then we probably would deal with it in some way.

The Vice-Chairman: But there must be something in between Randolph Scott shooting somebody bloodlessly and what we saw yesterday. There must be something in between which portrays the violence but doesn't do it excessively.

Mr. Breaugh: We will get around to it.

I wanted to pursue what you just said because you have repeated that several times in the last couple of days. There are a couple of things in there. Understanding that you seem to have taken a more rational, more logical, more organized approach to this whole field in the last year or so than you did previously, through all of this development there seems to me to be a strain of illogic at work. You repeatedly have said it is not what you or someone on your board of censors thinks is right or wrong, but what the community out there thinks is right or wrong. That strikes me as strange because the community is not doing the censoring, you are.

A couple of times you have mentioned this causal effect in having established that there are two or three studies around about films causing violence, that a lot of people out there think that films cause violence. You then say, "But we wouldn't do that because that relationship has not really been nailed down yet." It makes me ask, how do you make that distinction? You are reading two or three studies now which indicate that certain violent scenes may have been repeated in the public and there may have been a connection. Having said all of that and read all of the studies, you have been saying, "But we ignore all of that." Is that possible to do that?

Mrs. Brown: I don't think it is possible to ignore it. I think we have to be informed, but I think also that if the community isn't informed or concerned, or if it doesn't agree with the studies, then we have no right to impose that kind of paternalism.

Mr. Breaugh: That is the next step I wanted to take with you because it strikes me that all of what you are doing now is geared to the matter of the community accepting it. If the community did accept that all of that was true, that all of that causal relationship was true, if they accepted all kinds of brutality and portrayals of brutality and abuse on the screen, you are really saying that you would allow all of that to go on the screen.



Mrs. Brown: If the majority of the community sanctioned that and wanted it there, I don't think we would have any choice.

Mr. Breaugh: That is a strange of thing for a board of censors to be saying.

Mrs. Brown: Perhaps.

Mr. Breaugh: There is a twist in that.

I wanted to follow up this and a couple of other things too. You gave us a copy of this examination by documentation which I looked over yesterday and have had a chance to look at again this afternoon. At first glance it seems like a straight little bureaucratic piece of paper: identify all of this and all of that, what is the country of origin and what is the year of production. Then it says, "content, story line, description" and there is space for about a paragraph here, which strikes me as being a little on the slim side. Then it goes on to "review documentation and enclose any."

I got back to that thought again. If I had a movie and I wanted to put in here, I would type up a nice little story line, find a couple of good reviews and enclose those reviews, send them in to you and you would probably accept them. But when did we ever delegate that somebody who wrote a review for a newspaper in New York City, London or Paris, or in the Globe and Mail, the decision as to how we are to censor our films? I don't recall doing that, and if that is the case, then why is this on this little document?

Mrs. Brown: I think it gives added information as to whether or not there could be controversial content, whether or not we really want to look at that or screen it physically.

Mr. Breaugh: In other words, if I did give you a nice review from some London newspaper, you would probably just say, "Okay."

Mrs. Brown: It would depend on who you were.

Mr. Breaugh: That is the other interesting point. Why does it depend on who I am? Are there licensed reviewers out there? Are there those who have the stamp of approval and those who do not? Is Rex Reed a good reviewer?

Mrs. Brown: It's not the reviewer who is our concern.

Mr. Breaugh: It's the review.

Mrs. Brown: No, it's the curator.

Mr. Breaugh: Oh, so there are good curators and bad curators.

Mrs. Brown: You are making a moral judgement. There are responsible curators--

Mr. Breaugh: I am not making the moral judgement. You are

the one who is responsible for the moral judgements.

Mrs. Brown: No, I am not. Here we go. Here are the criteria for the use of those forms. For people who wish to apply to use the examination by documentation approach, which has worked very successfully in Quebec for years and years, there are certain criteria for curators or for art spaces which may use this documentation approach. I could read them.

The Vice-Chairman: This is just for special exhibits, not for general exhibition.

Mrs. Brown: That is right. It is a permit to exhibit in one gallery or art milieu.

"Exemptions from standard procedures for physical screening and classification may be granted upon applications to venues which (1) have been incorporated for at least two years with a community board of directors; (2) have been submitting films to the board for a period of a year or can supply complete programming for a year; (3) programs will include festivals or principally films as an art form; (4) the groups are recommended by Ontario Arts Council or are publicly funded."

Mr. Breaugh: I am interested. I just think you have kind of got yourself into a position where you are on very nebulous ground when you talk about community standards, not really having identified how you define those. Is it your poll that sets community standards, is it the Globe and Mail poll or the one commissioned by the Toronto Star or one which I dream up? Even if you accepted that whole premise, is that really the way you want to go?

You can walk around this censorship problem and you can dignify everything you do and justify everything you do and rationalize it, put a system in place, make it fair and do all kinds of wonderful things, but when you get right back down to it, the basic problem is censorship.

Mrs. Brown: That is correct.

Mr. Breaugh: I guess as I saw in one of the briefs from one of the groups which is not too happy with what you are doing, the objection would not be present if you were classifying films, so that if someone broke the law he would then be charged, have an ability to go to court, have a public hearing and then face the consequences--be convicted, not be convicted, whatever--and all of that would be done publicly.

Our system in Ontario does not do that for films. It strikes me that we may be recognizing that the Criminal Code of Canada is not what it should be and that some changes should occur there. I grant all of that. We may be saying that the law is behind the standards of the community by several light years. You might catch me agreeing on that. But I really have difficulty saying either to a small of people or a large group of people, that we give to them the right to say to somebody out there, "Your product, your concept of art cannot be displayed."



We could say to them: "You can display it if you want but if you break the law you are going to go to court. You will have the judicial process, imperfect as it is, at least in place. You will have the right to argue your case publicly." But we are still not doing that; even with the little proposed appeal process that is there, we are not doing anything like that.

I know that you have given us a rather good, long and eloquent and rational argument over the last couple of days, but we are still dancing around the issue and we still are accepting censorship.

Mrs. Brown: You know what is so good? That decision is yours, not mine. We have in existence a policy of prior approval of film based on a power given to the board to approve or disapprove. You are to decide whether or not that policy continues to exist. You give us our jurisdiction and our mandate. So I am not pleading the cause for censorship; I am saying that given the policy that exists, this is how we are operating, this is the product that we are dealing with. If you are representing your community, do you think the policy should exist?

Mr. Breough: On a personal opinion, I believe very strongly in censorship, my censorship. What I want in a democracy is the right for me to say: "I don't want to read that. I don't want to go and see that show. I don't want to attend that piece of theatre." Short of that, I am having real difficulty justifying anything else.

I don't go to movies because I think movies, by and large, stink. If I have two or three hours to spend, I don't really want to pay money and half an hour into it find out I really don't want to be there. I generally do not go to shows. Other people like to go to movies. Most of what we saw yesterday was stuff I certainly would not want to pay money to see.

I have some difficulty with it. This is not a very real political issue to me. When people are starving to death in my riding, it causes me to pay a little more attention than whether this is really an art film or not. Others in my society around me look at it a little differently. I have to admit that I have not heard in two days now a real grappling with the censorship problem. I have heard a lot of justification of the government's policy, the existing legislation, the approach you are taking and all of that, but you still have not nailed down for me--and I guess you do not want to--the problem of censorship.

Mrs. Brown: It is not my responsibility. I have been given the Theatres Act to administer and I have tried to work out an approach and a philosophy for exercising that jurisdiction that I think make sense. But it is the legislators who decide. It is not up to me to determine whether or not such a policy continues to exist. I think if you study your constituents as carefully as we have, you will come back and support it, whether or not emotionally you think it is a good think. I think if you really research your community you are going to find that there is a tremendous support

for some kind of controls. That is the only argument on which I would base it.

Mr. Breaugh: I don't doubt that for a minute. I do not doubt that 85 per cent of my community is the same as 85 per cent of everybody else's community. They don't go to movies. The short extension of that is, does that 85 per cent have the right to say to the other 15 per cent, "I am not only not going to go, but I am not going to let you go"? I am not at all convinced that is correct.

I want to wrap this up because we have had a long day, but there are some things that I cannot help but notice. Although in our listing you are called the Ontario Board of Censors, I have heard for the last two days really a long defence of a classification system. In your little publication here about what you passed and did not pass you call yourself the Ontario Classification Board. If you think the major part of your job is classifying, not censoring, if you call yourself a classification board, not a censor board, and if you have all this rationale there for classifying films, why don't we just do that? Why don't we just classify films?

Is it really worth all this foofaraw for the four per cent of films you really want to censor? Why don't you just let them go, and whatever crackpot wants to go and see that kind of stuff, let him do it. Whoever loses his shirt by investing in that kind of films, let him do that, and the rest of us will all stay away and be, I think, relatively unharmed by it all.

Mrs. Brown: I think that is naive. I do.

Mr. Breaugh: I love it when people call me naive. Do it again. It has been so long. I am going to move to Oshawa and start over again as a virgin.

Mrs. Brown: I was entrapped by you.

Mr. Breaugh: Why don't we do that? Why don't we just say this whole concept of censorship and getting into the kind of funny definitions--If you took aside the seriousness of the matter and read this list into the record of what we actually have people doing now, filing reports monthly deciding which shots of the penis are okay and which are not, which parts of a woman's body can be touched and which cannot, and--here is the one that caught me--eliminate the view where the crocodile's belly is slit open and views of the entrails being removed, is that really what government in Ontario is all about? Is it worth our while to do that? Do you think it is?

Mrs. Brown: I would be happy to speak personally, but I would not want to speak as chairman of the board right now.

Mr. Breaugh: Speak personally then.

Mrs. Brown: May I speak personally?

Mr. Breaugh: Sure.

Mrs. Brown: I think if that fine line that we are holding



is removed, it is going to affect at least the Toronto community. Toronto is commercially--you heard the distributors this morning--a very big market. There is a market for hard core pornography, and as this is also a convention centre, if the finger is out of the dike, I think it is going to open up Yonge Street. I also think that what you have on 42nd Street in New York is not far beyond a possibility.

4 p.m.

There is pressure to break the board in order to open this town up for a real corner in pornography because the market is here. We are second or third to New York City here in Ontario as a commercial market. We are a convention city. I think it is going to impact a great deal on your quality of life if you open it up wide. I really do. That is my personal point of view.

Mr. Breaugh: I have trouble with it. I listened to you speak and you seem to be a very rational person attempting to do a very delicate job, and you are probably doing it very well.

Mrs. Brown: I am tiptoeing through it.

Mr. Breaugh: I have listened to the minister make pronouncements about this, that and the other thing. It sounds as if everything is just fine, but on the way home I drop in at the corner store. In my milk store there is the worst kind of pornography you would ever want to see in your life. So people say, "We are defending the faith, protecting the border, saving souls." Yet all I have to do is go up to my corner and there it is. I do not buy it, and I suspect that 99 per cent of the people in that community do not buy it, but it is there.

Mr. Chairman: They are all in cellophane wrappers in Oshawa.

Mr. Breaugh: No, all used. If you go over to Yonge Street, what is there in a pornographic nature that is not being sold in Toronto now?

Mrs. Brown: I think there is a big difference between personal and private pursuits, which is really the crux of this thing. If you want to buy a book and take it home, that is something quite different from what is played on a public screen and which the community as a whole condones.

If I were out there arguing for censorship or controls for public exhibition, that would be my argument. I am not going to defend it any more. I am not going to be entrapped any more by you. If that goes into Hansard, it should have a smile behind it.

Mr. Breaugh: The irony that is there is that I would suspect that with the current legislation we have and the position of the current temporary government--

Mr. Rotenberg: We have been here for 38 years.

Mr. Breaugh: In the history of humanity that is a drop in

the bottom of the lake, or it is the bottom of the lake. It strikes me you have taken it about as far as it can go and in the way that things happen in this province we really are moving to a classification system, not a censoring system, and it is a matter of time until we are there. I do not understand why we maintain the pretence that there is a censorship process here. For a very small percentage of people, there is. Why? What useful purpose does it serve? I remain unconvinced that it serves that purpose.

I believe in the classification work you are doing. It strikes me that you perform a service for me. You are telling me all of the movies that I should not waste my money on. That seems to me to be a useful thing, but is it useful to retain a board of censors in that sense when I think, and I will put words in your mouth, you would really want to do something slightly different. I see by your actions, by the forms, the format and the publications you put out that you are attempting to do something slightly different.

Mrs. Brown: I am attempting to maintain that bottom line which I think is absolutely essential. If you have a vote on whether or not there should be a bottom-line censorship function in this province for films in public exhibition, I think you should, in all conscience, consult your constituents because if you are serving them you are going to reflect them.

Mr. Breaugh: Okay. That is a legitimate thing for you to say, but I would have to tell you as a politician that if I consulted my constituents on the seatbelt law, there would be no seatbelt law in this province. If I consulted my constituents on the price of alcoholic beverages, they would be a hell of a lot cheaper than they are. If I did that just across the board on a number of moral, and not so moral, things which the government does, that would be a very difficult thing to do because your whole set of moral values would be wrong.

I feel that in the work of the censor board, however well-intentioned you might be, that is not the way to do it. It strikes me that you are attempting to do something on which I and my family are forming moral values and opinions of our own through a whole lot of things. Frankly, the work that you do does not have much of an impact on me or my family at all, especially those of us, that 85 per cent of us, who do not even go to the movies.

Mr. Chairman: Mrs. Brown, along the line of what Mr. Breaugh was saying, you use the phrase that you are trying to use an approach and a philosophy that makes sense. I was wondering whether you ever make comparisons with other jurisdictions. I think the feeling, the community interest or the community reaction, for example, in Medicine Hat would be basically the same as Orillia. I was wondering where we see such a difference in the treatment of some films on a province-by-province basis whether you ever take their community standards into consideration at any time, or are you restricting your interpretation of community standards to Ontario?

Mrs. Brown: I have to. Just in terms of time constraints I have to. If I am voting or processing a film for Ontario, it is



all I can do in order to work full-time and be out on evenings and so on communicating with people in Ontario. However, we do exchange all our elimination and screening reports with the other provinces; so we do, after the fact, compare our classifications. As the industry people said this morning, they are generally in line.

Mr. Charlton: What do you do in terms of comparing impact reports of the things you are saying you are concerned about?

Mrs. Brown: I do not think they are researching in the other provinces as actively as we are.

Mr. Chairman: The other theme was the idea that ultimately you may be moving to strictly a classification function.

Mrs. Brown: I personally am not.

Mr. Chairman: I understand in Manitoba they do not edit or ban there.

Mrs. Brown: But they do have a very intimidating deterrent in Manitoba.

Mr. Chairman: What is that? Is it unemployment?

Mr. Epp: No movie houses.

Mrs. Brown: All the films for exhibition go to the Manitoba board. They are classified. They will release the ones they see as having potentially obscene matter in them, or could be contraventions of the Criminal Code, but they will send a letter to the police with copies to the distributors saying, "This film is out there. It could probably be in contravention of the Criminal Code. We are alerting you to this." When the distributor gets a copy of this letter, it certainly deters him from exhibiting it.

Mr. Breagh: But if he truly believes that the release produced is art and is not in contravention of the Criminal Code or whatever, he is free to release it.

Mrs. Brown: He is free, but in effect he does not release it. Practically, what happens is most of the distributors send Ontario prints to Manitoba because they do not want to run the risk.

Mr. Chairman: Does the board have any function at all in respect to the advertising of films?

Mrs. Brown: Yes. All printed advertising must be approved by the board. This helps us a great deal in our information pieces. For example, if we take a look at a film and it looks very violent, we look at the advertising. The advertising says it all--chains, whips or whatever. I do not then think a violence warning is necessary if the advertising really portrays the content of the film. Sometimes a warning would be in relation to the type of advertising of the film. As long as the theatregoer is informed about content, I think that is the main concern the board has.

Mr. Rotenberg: On that point, is your warning mandatory on ads in front of the theatre? Can you enforce a warning?

Mrs. Brown: Yes.

Mr. Epp: Have you ever had an occasion to take any of the movie houses to court for any particular reason through the theatres branch? Have you ever had occasion to do that because you put out a particular film and they changed it, or something of that nature? Have you ever done that in any instance?

4:10 p.m.

Mrs. Brown: Not to my knowledge. I know that prior to my coming to the theatres branch there was a serious problem with the film Deep Throat. That was before the theatres branch had jurisdiction over 16-millimetre film. Deep Throat was not submitted to the board, knowing it would not have been approved back in 1972 or 1973, so they made 16-millimetre copies and were showing them. Since it was not within our jurisdiction, the charges were laid by the police rather than under the Theatres Act.

Mr. G. W. Taylor: One question: When you appeared before the justice committee a while back, and I guess it had the description of being called a trial or a hearing, which it was neither--

Mrs. Brown: It was a public hanging, was it not?

Mr. G. W. Taylor: Yes. It had no pretence of being either of the two words I used, but it was alleged, and I suggest totally not proven, that some of the members had to have a philosophical bent that they were in favour of censorship, as such, and that if somebody was not in favour of censorship they should not be a board member. Is there any test that your new board members are put through to check their philosophical allegiances and, if so, then who tests them that way and who does choose the board members presently?

Mrs. Brown: Board members are chosen, I understand, the same as other members of boards and commissions. The applications are sent to the minister's office and they are reviewed by a committee, I suppose, and named by order in council.

Mr. Epp: They are certainly not chosen the same as rent review officers?

Mrs. Brown: I do not know.

Mr. Epp: I hope not, because they have to be all of one political party.

Mrs. Brown: Board members are selected and approved by cabinet, to my knowledge. Applications go to the minister's office. I receive the orders in council and I am introduced that way to the new board members. I do not know what kinds of inquiries are made of the members, but there are three back there if you would like to ask them.



Mr. G. W. Taylor: Andy Watson did not ask one question I wanted to ask, to show how you have improved the board just as a mechanical procedure. He did not ask the question of the method of screening all films. At one time you did the original and every single copy that went out to distributors. You have improved that. Could you just elaborate for the record?

Mrs. Brown: I think I mentioned before that all subsequent copies had to come up for stamping. Now just the original comes for stamping and we issue certificates or censor bands for subsequent copies without them physically coming to the branch.

Mr. G. W. Taylor: So you have improved for the distributors that provision of bringing in 60 films that they are going to distribute, and they now just bring in one.

Mrs. Brown: It has saved a great deal of time.

Mr. Rotenberg: How do you know that the distributor has made the same cut in the other 59 copies?

Mrs. Brown: He makes the same cut?

Mr. Rotenberg: You had the original.

Mrs. Brown: If a film is cut, of any of the four per cent that are cut, every subsequent copy must come to the branch for stamping. Since the majority of them are not cut, they are simply approved, then the issuing of subsequent certificates without them actually physically coming to the board is a much--

Mr. Rotenberg: How do you know that the producer, after the first copy has been approved, does not put something in further copies?

Mrs. Brown: I do not think there would be any reason for it. If they did, and if it did not conform to the original copy, of course, they would again be in contravention of the Theatres Act and subject to prosecution. I do not think there would be any reason or rationale for that. Major films in general distribution certainly should be the same.

Mr. Rotenberg: There is the European copy and the American copy. I just think the whole business is too much on the line.

Mr. G. W. Taylor: How do you see your future role, given the advancement in modern communication such as the suggested satellites and those with pornographic banding on that? How do you think that will affect your future and the functions that you are presently carrying out?

Mrs. Brown: I think there is a growing community concern about the impact of the media on their lives. I would say decisions about whatever controls are going to be exerted on any media broadcast within the community is a decision that is going to be

made by the legislators and hopefully in the reflection of community concern. In the meantime, we are working within our framework and within our jurisdiction. I could not begin to project what the impact will be of pay television and the exploding videotape market. I really do not know. I see that as a personal private thing again. Public exhibition is where we are concerned.

Mr. G. W. Taylor: Except the gentlemen before us this morning seemed to indicate that certain things would be shown on TV and on TV they were not under the same restrictions as in public theatre. I disagree with him slightly in that under the present system, most of the major networks, not just for commercial reasons but for their own, censor internally what they think is acceptable public--

Mrs. Brown: They are much stricter than--

Mr. G. W. Taylor: Far stricter than what you do.

Mrs. Brown: You will never see on television what you see at the Rio or the Cinema 2000.

Mr. G. W. Taylor: There was just a recent one put on where in the European version the actress appeared bare-breasted version and in the US one she did not. Again, these were two films made for TV. In another one, George C. Scott in Hardcore, by the time it played through the movie houses and through the different networks, the Canadian and the US, there were many cuts in that particular movie.

Mrs. Brown: There was no cut in it when it came through our board.

Mr. G. W. Taylor: Right, but yet it is done because they know the market they are penetrating or trying to reach and they preserve it by their performance. Again, following the same question, when you get to that narrow band, do you think it is going to open up and somebody is going to say, "Do not turn to channel X off that satellite," knowing that is the narrow band and that is the porno channel, and the other ones will look after themselves? Do you foresee that pornography channel coming, even if it is in what is referred to now as narrow-band broadcasting for satellite?

Mrs. Brown: Again it is hard to know what the community reaction is going to be, is it not? It is hard to judge. I would be afraid to project.

Mr. Epp: I just have one short question. Do you ever get the feeling that you are being used by the movie makers where they put in some sensational picture some time just to get you to probably cut it out so that they can get the publicity? I often think, sitting on the sidelines, that it looks as though they deliberately put something in that has no real significance to the film but they want to get it cut out, get all the press reports on it and they get exactly what they want. They get their publicity free and in the meantime they try to embarrass the censor board in doing that.



Mrs. Brown: I think an admitted example of that was the film In Praise of Older Women. The board was used to get tremendous publicity for that film. Yes, I have seen it happen many times, where they would prerelease a film in Ontario before they would release it in United States in order to get the Ontario censor board reaction to it, then maybe another minute might be taken out before it played in the States, in the midwest.

Mr. Watson: I asked those fellows that question this morning and they did not think that happened at all.

Mr. Epp: They had their own agenda.

Mr. Chairman: Thank you very much, Mrs. Brown. Gentlemen, if you can stay for a few minutes we can have a short meeting in camera.

The sitting continued in camera at 4:16 p.m.





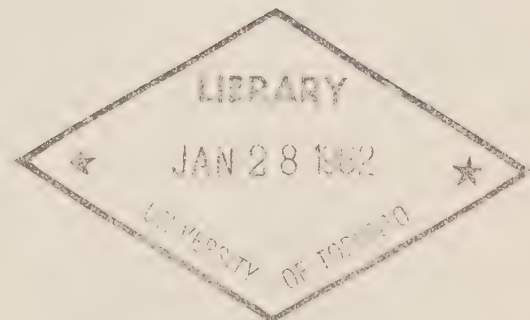
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCIES, BOARDS AND COMMISSIONS HEARINGS

TUESDAY, JANUARY 12, 1982

Morning sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)  
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)  
Breagh, M. J. (Oshawa NDP)  
Charlton, B. A. (Hamilton Mountain NDP)  
Edighoffer, H. A. (Perth L)  
Epp, H. A. (Waterloo North L)  
Hodgson, W. (York North PC)  
Mancini, R. (Essex South L)  
McLean, A. K. (Simcoe East PC)  
Robinson, A. M. (Scarborough-Ellesmere PC)  
Taylor, G. W. (Simcoe Centre PC)  
Watson, A. N. (Chatham-Kent PC)

Substitution:

Kolyn, A. (Lakeshore PC) for Mr. Robinson

Clerk: Forsyth, S.

Assistant to the Clerk: Carrozza, F.

Research Officer: Eichmanis, J.

Witnesses:

Johnson, E. R., President, Police Association of Ontario  
Wales, J., President, Ontario Association of Chiefs of Police  
Wilson, R., Co-Ordinator, Municipal Police Authorities



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, January 12, 1982

The committee met at 10:23 a.m. in room No. 228.

AGENCY REVIEW: ONTARIO POLICE COMMISSION

Mr. Chairman: Gentlemen, we will call the meeting to order. We don't have a representative this morning as yet from the New Democratic Party, but I imagine somebody will be along in a few minutes.

We are, as you all know, considering the Ontario Police Commission today, and first on our agenda is Chief Jack Wales, who is president of the Ontario Association of Chiefs of Police. Mr. Wales, would you mind coming to the hot seat, front centre? I understand you have a brief. I think probably if you would just read or refer to your brief, this would be of assistance to the members of the committee, sir.

Chief Wales: Yes. The brief, Mr. Chairman, will be very short. I am representing, as you mentioned, the Ontario Association of Chiefs of Police, and currently I am the president. The Ontario Association of Chiefs of Police appreciates your invitation to our association to appear before this committee in its review of the Ontario Police Commission. I must apologize for not submitting to you a detailed brief on the subject, this being due to the rather short notice of the meeting and also the festive holiday period.

I believe this is the first time the Ontario Association of Chiefs of Police has appeared before the procedural affairs committee. Speaking on its behalf, I am not quite sure what is expected. My presentation will be in the form of comments in areas of the operation of the Ontario Police Commission which, I believe, may assist your committee's review of the commission.

The Ontario Police Commission is an advisory and supervisory body of quasi-judicial powers that was created some 20 years ago. Its authority and responsibility are contained in part III of the Police Act of Ontario. The Ontario Association of Chiefs of Police unanimously agrees that the Ontario Police Commission is performing an extremely necessary and beneficial function within the administration of justice in Ontario and strongly recommends its continuance.

Recently, the Ontario Police Commission has experienced some internal reorganization within the advisory services section. The advisory branch has been changed to an inspectorate branch and is under the supervision of a director. This branch is responsible for advisory, consulting, inspection and investigations.

Our association agrees that this reorganization was long overdue and should result in more detailed and complete inspection of police forces on a regular basis, which will greatly assist

local police governing authorities and chiefs of police throughout the province and should create uniformity in the administration of the 127 police forces. It is hoped that through these regular, complete force inspections the number of investigations into police force operations will be substantially reduced by preventive action at an early stage. Instead of allowing small problems to lie there and fester, through regular inspections we feel they will be brought to light at an early stage and corrective action taken.

Areas of the Ontario Police Commission that we believe should be addressed are as follows:

(a) The Ontario Police Commission should consist of four members, which would include a full-time chairman, a full-time vice-chairman and two part-time members. As you know, the present commission consists of a full-time chairman and two part-time members. Bill 107, passed on December 10, 1981, states that the commission shall consist of not fewer than three and not more than nine members.

(b) The inspectorate branch staff should be increased by sufficient members to enable it to adequately perform its functions as outlined in the recent reorganization of that branch.

(c) Annual reviews of all police forces should be mandatory and should include the Ontario Provincial Police.

(d) Boards of police commissioners and committees of council should be more accountable to the Ontario Police Commission in a similar fashion to the chiefs of police.

(e) When the commission holds an inquiry or investigation under section 58(1) of the Police Act and, as a result, the commission makes certain recommendations, it should be mandatory that the recommendations be implemented. At the present time, there is no authority to demand their implementation by the local governing authorities.

(f) The commission should expand the publishing of its newsletter from quarterly to monthly and should include recent decisions involving police matters, law changes, new equipment, technology and so on.

(g) The commission should continually review Ontario's police training programs and the operation of the Ontario Police College to determine if they are meeting current needs and updating their future programs accordingly.

(h) The commission should produce a manual of guidelines for the chiefs of police similar to the manual of guidelines for police governing authorities which the commission recently published.

(i) The technical services branch should be continually monitored to ensure that it is up to date in seeking new technology in the law enforcement field and should also explore new technology which may result in law enforcement cost reductions.



As you are aware, gentlemen, the present Police Act is under review and it is our hope that some of the aforementioned concerns of the Ontario Association of Chiefs of Police will be dealt with by way of amendments to the Police Act.

In conclusion, I would like to state that the Ontario Association of Chiefs of Police supports the Ontario Police Commission and will co-operate and support it in fulfilling its mandate. I thank you for inviting the Ontario Association of Chiefs of Police to appear before your committee.

Mr. Chairman: Chief Wales, first of all, I want to compliment you and your association on this brief. It is brief and, at the same time, it is to the point without a lot of preambles. You have touched on a dozen or so points that interest your association or apply to your association. I hope these will raise some questions. The thing I could start off with--I don't think you touch on police training here, do you? Yes, you do.

Chief Wales: Yes.

10:30 a.m.

Mr. Chairman: On page three, under (g), are you happy with the present training facilities, training programs and training period that is required of recruits and police officers, refresher courses and things like that offered at Aylmer or any of the other three or four facilities or colleges in the province?

Chief Wales: Yes, generally, we agree, and certainly we agree with the facilities that are there. I believe they are second to none in the North American continent. The recruit training course and supervisory courses have recently been revamped. We feel this was long overdue. We are satisfied with the results that are coming forth now, but I don't think the commission should sit on its laurels. They should be looking to the future as well and be developing programs. As the society changes, so must our programs. I believe they are on the right track at the college now.

The refresher course, as far as our association is concerned, is one of the most important courses at the Ontario Police College. It is a short course for refreshing and retraining officers in the five- to six-year category who have had no training during that period other than some in-service training. I hope this will continue, that it does not fall by the wayside for economic reasons. In particular, in the smaller forces, up to 40 and 50 men forces, it is rather difficult to continually conduct in-service training. This refresher course, or what is called advanced training course, of a three-week nature is exactly what these sizes of forces require. We strongly recommend its continuance.

Mr. Chairman: I can recall talking to our own chief in Halton region. I was commenting after attending some graduation exercises at Aylmer and I mentioned I did not see any shoulder flashes, shoulder badges, from the Halton region either in the class or on the people who were there on a refresher course. His complaint at that time was, "I just cannot spare the men. There are a number of officers on my force who should be there, but I just



cannot spare them." I was wondering if that has been cured in the last three or four years, or if you have any comment on that.

Chief Wales: I can speak for the smaller forces, in particular in regard to the refresher or advanced training course. We can find the time--in fact, we must find the time--to send our men to the Ontario Police College. It is for a short period, and it is a cram course, a refresher course. I agree this can be done.

If I might, Mr. Chairman, while we are on that subject, though this is not contained in the brief, there is one area that is becoming very important to us, and that is firearms training. As you probably know, many police force ranges throughout the province are antiquated and are being inspected by the safety branch and the Ministry of the Environment, and some are being recommended to be closed until they are brought up to the proper specifications for lead emissions. In the smaller forces, it is an expensive program to try to update a range or to have a training facility that meets all the requirements. I know in my own case, as of December 3, we can no longer use our range, after an inspection.

In Judge Greenwood's report, there is a recommendation that training for firearms and use of firearms should be conducted in the field, rather than at the Ontario Police College. I agree with this, and I am sure the majority of the chiefs agree with it. It would create much more uniformity, be less costly and safer if the Ontario Police Commission considered conducting firearms training out in the field in different areas, which could take care of three and four forces at a time. I think it would be a great cost reduction to the individual forces without increasing the cost too greatly to the Ontario Police College.

Mr. Chairman: Will those facilities be fairly expensive? Are you suggesting maybe that there be one facility for four or five different regions, that sort of thing?

Chief Wales: Yes. If you take a large force that has an acceptable type of range and facility, why could it not use that facility to train there and bring in the forces from a reasonable distance surrounding that area? It could be done by seconding instructors from the college to travel throughout the province to conduct this, or by the college establishing a training program for firearms training officers and certifying them. Then they would go back to their respective forces in the large forces and would become training officers for other police forces, rather than individual departments trying to do the training.

Mr. Chairman: Mr. Watson, do you have a question?

Mr. Watson: Yes. I am concerned with section (e), when the commission holds an inquiry investigation and makes recommendations. You have stated those recommendations should be mandatory. Can you expand on why you think those recommendations should be mandatory? Is the present system not working? I am a little surprised that you as the chief of a police force would want--I do not want to say give up the power, but that seems to be concentrating a lot of power in one place.



Chief Wales: When a problem arises within a law enforcement agency within a community and where everything else has failed and it cannot be settled locally, it comes to the point where the Ontario Police Commission must hold an inquiry into the problem, whatever it may be. The commission is really the expert in the operation of police forces within the province. That is really why it was created, namely, to keep everyone on the straight and narrow. If they go through a lengthy and a thorough inquiry and determine what the cause of the problem was and what corrective action should be taken and make recommendations to the local police committee or local police commission to correct the situation, I think those recommendations should be implemented. As it is now, the recommendations can be ignored by the local governing authority.

Mr. Watson: But in practice are they? Is it worth while giving that type of what I would call authority to the police commission for the number of times that happens? There must be other methods of friendly persuasion or financial persuasion or otherwise of accomplishing those recommendations.

Chief Wales: Really, if there was another method, what is the purpose of holding inquiries by the Ontario Police Commission? I know of no other method to force the recommendation to be implemented. You mentioned financial. Possibly the attachment of grants until the recommendations are implemented may serve that purpose; I do not know.

Mr. Watson: Is this a problem at the present time? Is it theoretical or is it a practical problem at the present time?

Chief Wales: We have seen it occur in two or three instances not too long ago, where recommendations made by the Ontario Police Commission have been ignored. I am not prepared to argue the individual cases on it, but we see that happening.

10:40 a.m.

Mr. Watson: I understand your concern, but I am not convinced this is the answer. I think if there was sort of something in between--

Chief Wales: Certainly we would be receptive to an in-between situation that would work.

Mr. Watson: Do you not have any concern about the police commission coming down with a recommendation for your city which you and the people in your city just absolutely would not agree with? It is sort of Big Brother telling us what we have to do without any of our concern.

Chief Wales: That is rather a tough question to answer. I can really speak only as a chief of police. If there is an inquiry within my force and the recommendations are that it is being improperly administrated and the chief of police is at fault, if the recommendations are such, then personally I would expect my commission or committee to implement those recommendations and let the chips fall where they may. If it involved myself, if I had not been doing my job properly and had not pulled up my socks, then I must suffer the consequences.



Mr. Watson: Yes, but you have just said that is what your local commission should do. I agree that if the recommendations are made in good faith then they should be followed.

Chief Wales: On the other hand, if they do not follow those recommendations and let things carry on the way they were before, then I think they are doing a disservice and really I, as a chief of police, would be doing a disservice if what I have been doing in the past has not been proper.

Mr. Chairman: Chief Wales, I would assume your local police commission would have at least two or three locally elected people from the local council on that commission, and I would think probably the trend would be that there are going to be more elected people and probably fewer provincial appointees, although I know that the chiefs are not necessarily in favour of that. The point I think Mr. Watson is trying to make is you have an Ontario Police Commission of appointed, albeit very capable people, telling what may be basically an elected body, a local commission, somewhat like a local school board, telling them they have to implement certain policies and there is no real option or choice. According to the legislation, as you envisage, they have to implement something that has been handed down from on high. I think that is the point Mr. Watson is trying to make and I can see some problems with that, particularly if there are more elected people, if they form a majority of an elected commission.

Chief Wales: Possibly the answer to that would be that as people are elected to local police committees and police commissions, there should be a training program for these people. It may help to improve the running of their own ship.

Mr. Rotenberg: About the only profession that does not have any training is the politician. If I may pick up on this, I think we can maybe compare a little bit the Ontario Police Commission and the Ontario Municipal Board, which also deals with municipal politicians and their decisions and forces certain things on municipal politicians. But the Ontario Municipal Board in most cases has an appeal from its decisions to the cabinet or the relevant minister.

How would you feel--you say you are looking for something in between; this is something I have just thought about--if the Ontario Police Commission orders became mandatory, subject to an appeal by, say, the local police commission or committee to the Solicitor General or, in effect, the cabinet. So if there was a real impasse between the Ontario Police Commission and your police commission, your commission could appeal to the cabinet and have some review, as the OMB orders can be reviewed. That would mean the final decision would be made by elected representatives rather than by appointed people. How does that sort of a situation grab you?

Chief Wales: I do not know. I really cannot argue that point. I would not want the final decisions to be totally political types of decisions on policing and law enforcement. Really, I do not know whether that would work or not.

Mr. Rotenberg: Maybe not. I have caught you off guard, I know. It is just something I have thought about as a possible parallel.



Mr. Breaugh: I had a number of questions coming out of your recommendations. I take it that in general you are in support of kind of beefing up the operations of the Ontario Police Commission, giving them a little more strength in law and a little more standardization about information exchange and things like that. Is that the general drift of what you are doing?

Chief Wales: Yes.

Mr. Breaugh: I want to ask you just how far you want to go. For example, one of your recommendations seems to run a little against that in a sense. You ask that the commission expand the publishing of its newsletter, the purpose of which is really to update people on matters concerning policing. That would not necessarily put any obligation on anyone to do anything.

What about simple things like equipment? Not all police vehicles are really equipped as emergency vehicles. In other words, they do not have a siren, they do not have roof lights, the roof lights are not standardized. Are you suggesting that perhaps we ought to go one step further in that regard and mandate that all police vehicles that in theory and in practice might be used in a chase situation would be properly equipped, that is, with a siren, roof lights, probably some standardization about the basic equipment of the police vehicle? There is now a proliferation of different kinds of vehicles used for police work.

Chief Wales: We did not delve into that. We felt this will probably be discussed within the amendments of the Police Act. Several committees at the moment are looking into amendments to the Police Act, and I am sure the equipment sections within the act and the regulations will be looked at very closely. I agree there should be uniformity, the same as with the uniforms. Even within our own association, to try to come up with uniformity in uniforms and equipment is a difficult situation. It is entrenched in tradition, the type of uniform the police wear, whether it be comfortable or serviceable. It is one heck of a battle to try to get change in equipment.

Mr. Breaugh: Do you see a problem, as I do now, with police forces, really for budgetary reasons? There used to be a fairly standard idea of what a police car was, a reasonable agreement on equipment. Now in most forces there is quite a difference, and it has to do really with budgetary considerations. Forces are looking at their budget and saying, "Well, if we buy a smaller vehicle and don't put the extra equipment on it, it will serve certain kinds of purposes." Has that reached a problem stage yet?

Chief Wales: I think certainly that is being considered in equipment, as you mentioned, in police vehicles. The administrators are looking at using smaller types of vehicles with less equipment on them for certain aspects of police work, such as serving of summonses, transport of prisoners and so on instead of using fully equipped police cruisers.

Mr. Breaugh: Some of that has to do with agreements that are struck with the police officers as well. In the Durham region, for example, I think in the last set of negotiations they



introduced the concept of having two-man cruisers except for traffic patrol, and the following day there was an immense painting of vehicles a bright yellow colour, and a large number of new traffic patrols out there so that they could have one officer in a traffic patrol vehicle. That seems to me to be a little ridiculous.

In a number of areas of Ontario, local forces seem to be a bit ahead of the rest of the province. For example, we have had a lot of arguments here about police chases. The Solicitor General maintains that there really is not any need to train officers. Yet some of the regional forces have gone ahead with chase schools. The Niagara region does it and Durham region ran a course for its officers. Basically in the field, chiefs are saying their officers need to be skilled and trained in how to operate a police vehicle in a high-speed chase, and that they will go ahead and do that.

10:50 a.m.

Through this recommendation are you encouraging that to become standardized across Ontario? In other words, what Niagara and what Durham thought necessary to do seems to me fairly logical for other forces as well to do, namely, train their officers in handling a vehicle in a high-speed chase.

Chief Wales: We agree that defensive driving and the training of officers are a must. In smaller forces it is rather difficult to train them in that manner. It is costly, and they do not have the manpower available for the training. A training program is presently being considered at the Ontario Police College, and we hope it comes about. As I understand it, it is under active discussion and research now.

Mr. Breaugh: A couple of forces in the province have tried to set up intervention units of different kinds. Do you feel there is enough communication back and forth from one police force to another to let you follow whether, say, a crisis intervention unit in Hamilton is working well enough that you ought to consider it in some other jurisdiction? Do you get a good flow of information now about that kind of thing?

Chief Wales: Yes. I think we do get at our conferences, seminars and so on reports on how these intervention units are working in other forces. That is another type of item which should be contained in the newsletter of the Ontario Police Commission as to what is working and what is not working within the forces within the province.

Mr. Breaugh: Would your association take it a step farther then and suggest, for example, with battered wives and the intervention units that are used, there ought to be incentives for other forces to establish such units, or perhaps, to go the other way around, try to integrate that into the work which is taught at the police college?

Chief Wales: There, again, whether you can establish a crisis intervention unit or not depends on the size of the force. But the training at the Ontario Police College should include, and does include, certain amounts of crisis intervention. I think it could be beefed up a little more at the recruit level and again at the refresher level.



Mr. Breaugh: All this kind of comes down to money. It concerns me somewhat that we may get different levels of policing throughout the province according to the local budgetary situation. Again, it would also include some local options. You may live in a community which believes in intervention and has a specialized unit, or at least has trained its officers in that regard, yet in a neighbouring municipality there would be none. Do you think there is a fair discrepancy now between one force and another in Ontario?

Chief Wales: I agree. A lot of it is for budgetary reasons and some is the makeup of the community. Some communities have very low types of incidents which require such an intervention unit. Really, the makeup of the community would dictate that, as well as costing.

Mr. Breaugh: One of the hot items locally, and I think around the province too, is the use of civilians in police work. From a number of points of view, it seems to be controversial. From a police chief's point of view, I am told that it is just a fact of life, and that with budgets as they are, it is going to be necessary more and more to use civilians in police operations. From the officer's point of view, there seems to be some reluctance to accept that idea. Perhaps you might look at that as saying somebody who is walking a beat out there might have an eye on a desk job inside the station. Do you see that as being a major problem now?

Chief Wales: I do not see it as being a major problem. I agree that we must go to civilianization in areas where we can. I am thinking of identification services, even to the extent of breathalyzer operators. Court assisting and prisoner escorting could be done at less cost by going to civilianization, and the job would be just as well done as by a police officer.

Mr. Breaugh: Right now there are no guidelines for the use of civilians in a police force except whatever a local police commission might have evolved. Surely, at some point in time, some group of people, like the Ontario Police Commission, ought to sit down and establish just exactly what jobs could be done by a civilian with specific kinds of training and where it would make a difference if a police officer occupied that particular role. I would be reluctant to support the notion that just because it is cheaper it is necessarily better. I could think of a number of occasions where, even though the job description might seem to be one which could be done by somebody with much less training than a police officer, I would want the experience, the background and the practical working knowledge of police work to be present, even though it would appear on the surface anyway to be kind of a secretarial function which is being performed.

Chief Wales: I would agree with you. It should not be used as a money-saving option only. I would certainly highly agree with you that this is an area that the Ontario Police Commission should be looking into setting up guidelines for the position of civilians within the police force who would replace police officers and considering the pros and cons of it. We would be prepared to assist them if they did do such a study.



Mr. Breaugh: One final area of concern which I have is the manual of guidelines for chiefs of police. One of the things which concerns me is that you can note quite a difference in the response of the police force from one municipality to another. I will give you one example. It seems that for certain kinds of investigations, there is no limit, there is no financial crunch and there is no questioning of whether to go and do this or not. If there is a major labour disruption in certain parts of the province, you know that the full police effort will be there. The camera crew will be out, the intervention units will be standing by, the paddy wagons will roll up each and every morning, and 60 and 75 officers will be present to escort people through some picket-lines, but in other areas of the province nothing happens.

I can think of a good example within my own regional force of an instance of a strike at Sandra Instant Coffee where each and every morning--I never did see the final price tag for that--I am sure they had more police officers to escort about 20 people through a picket line than there were on duty for the remainder of the day. Each morning I was there there were 60 or 75 uniformed police officers. There was an intelligence squad work, a camera squad at work, four or five paddy wagons, and on some mornings 10 or 12 patrol cars. All of that happened. There seemed to be no guidelines.

On other occasions, for example, when the Houdaille plant was occupied, there was not a police officer in sight. If one was to look at it from a law and order point of view, there was more law and order at the Houdaille incident with absolutely no police involvement at all than there was at Sandra Coffee where there were several disruptions. Are you thinking that perhaps that is one of the areas where you would appreciate some guidelines? Just exactly when are you supposed to call out the troops and when do you use some other negotiating technique to solve a problem?

Chief Wales: We presently have basic guidelines for labour disputes. When I say guidelines for chiefs of police, they are very broad and basic guideline that we would suggest, similar to the ones that were published for the police governing authorities. Certainly no guidelines could be drawn up to cover every situation within a police force, but a basic type of guidelines to create some uniformity in the operation of police forces.

Mr. Breaugh: Are you concerned that sometimes you get involved in situations which are nonsensical? To give you an example, in front of the Legislature this year, a gentleman came in from Bancroft with a toy dump truck full of soil. I counted 23 security and police officers there at one time. We were on the verge of having the emergency task force, and some of their officers did appear, all to remove a toy dump truck full of dirt. How do things like that happen?

11 a.m.

Chief Wales: I suggest that the circumstances, intelligence, information and so on must dictate what action is to be taken in a particular situation. What would occur is not



predictable. If something did happen and the force had not taken adequate precautions, it would be their neck in the wringer the next morning.

I think it has to be left to the individual judgement of whoever is in charge at the time as to what manpower is required and what action is to be taken. Certainly, there is much information available to the police, but that has to be an individual decision. I know that is not really answering your question.

Mr. Breaugh: It is just that from time to time you do see incidents occurring around Ontario that very quickly get ridiculous. A simple judgement call on the part of one person becomes extrapolated. Forgive me for saying it, but most police forces now have trained officers to play specific roles such as riot control or emergency task force units.

It seems they are almost looking for occasions to exercise their new-found skills. Sometimes, in the most ridiculous situations, you will see full-tilt emergency services provided for the removal of a toy dump truck of soil on the steps of the Legislature or you will see the emergency task force called out for the most inane of duties. It strikes me that, because that does get a lot of attention, it rather defeats the purpose of specialized training of units.

Chief Wales: I would have to disagree when you say that these units are out looking for jobs to do. Certainly, precautions must be taken. I think society today demands it. On short notice of a situation, how can you make a determination? Do we send a task force unit there or do we not, or do we send one or two policemen there, which may have fatal results because the task force unit was not sent? There is no way of doing it any differently as long as we have the violence in society we do have, whether it be task force units, traffic units or whatever. You do not know until you are there and assess the situation. Time is life.

Mr Epp: Chief Wales, I was just wondering, with respect, what your attitude is to the high-speed chases that have been going on in the province. A number of deaths have been caused by this. Is there any particular recommendation you people have for the government on this?

Chief Wales: Pretty well uniform guidelines have been set up and adopted by all police forces in Ontario. We think they are reasonable guidelines and we can live with them. I think they promote safety in high-speed police chases. There is no way you can discontinue police chases. Discretion as to whether a chase occurs or not has to be at the level of the officer who is at the scene and begins the pursuit, and then guidance from there on as to whether to terminate the pursuit or what.

That is made by headquarters or the officer in charge who is in the command centre of the police force, provided that the officer at the scene has the opportunity to be reporting back as to what is occurring and so on.

Mr. Epp: Are there any particular guidelines with respect to levels at which they should have high-speed chases? For instance, somebody might have stolen a car and they are not encouraged to pursue that person, as opposed to a person who might have just robbed a bank and killed somebody. If somebody has a stolen car, you spot it and then you end up having a high-speed chase and killing somebody in the pursuit of that person. You are not necessarily pursuing a guy who has killed somebody else after robbing a bank. Are there different guidelines for those situations or are the guidelines silent on that?

Mr. Wales: Not really. In the case of the person you say is in a stolen car, how do you know what is in the car or what that person has done just prior to being observed by the police? The circumstances at the time have to be left to the discretion of the pursuer and his immediate superior.

Just to say in black and white that if it is a stolen car you only go so far and then stop might well work in many cases. but in other cases how do you know that person in the stolen car does not have a hostage tied up in the back seat? I do not think you can develop guidelines to say you do this and then you stop at this point and go no further in every case. I think the basic guidelines we have now are good.

Mr. Chairman: Chief Wales, do you feel you have enough communication equipment, two-way radios, enough contact between the officer in the cruiser and headquarters or other cruisers? I am thinking from the point of view that there is no question that initially the police officer should follow the car, but is there enough equipment whereby you can set up roadblocks or bring in other cruisers that in some way can cut off the person who is trying to avoid the police, rather than two cruisers seeing the rather asinine situation of an accused or a suspect racing through town and a police cruiser chasing with flashing lights and possibly a siren on, when there are so many ways that person can be cut off?

Do most of the forces have sufficient equipment whereby there are more up-to-date methods of stopping that fleeing car? Do you have the manpower and equipment for that and, if not, do you need better equipment for it?

Chief Wales: This system is used certainly if it can be done by converging on the vehicle. Communications have improved greatly over the years. Most municipal forces have good communication systems. In a high-speed pursuit that will take you out into the country areas, it is sometimes rather difficult to obtain assistance from the Ontario Provincial Police or from another jurisdiction.

If they have units somewhere reasonably close, a roadblock or converging system would work. It will assist greatly when the OPP update their communication system and radios for their vehicles so that there is an interchange with municipal police forces on the radio. Certainly this system is used.

11:10 a.m.



Mr. Epp: On a related item, Chief Wales, from my experience this past summer, during a nice summer evening, a Sunday evening about 11 o'clock, I was riding along in a 40-mile zone when, all of a sudden, behind me the lights started flashing. Like a bat of hell, a police cruiser swept by me and about a minute later another one swept by me.

They headed for this small amusement park . I thought there must be something very serious going on to have those two cars going, by my estimation, at about 70 or 80 miles an hour down a highway in a 40-mile zone to this small amusement park. I stopped about 400 or 500 feet away to see what was going to happen. There were a few bikers there and within about three minutes they were all dispersed. Everybody left and that was it.

To my consternation, the whole thing broke up. I thought anybody could have got in the way of those two police cruisers at any particular point while they were speeding down the road at excessive speeds and the cruisers could have killed somebody. They ended up at the plaza and everybody was dispersed within about three minutes, as I told you, and that was it.

I just could not see the justification of those cruisers going at that speed. This was not a chase and I just could not rationalize them going at that speed to get to that park where everything was broken up in about two minutes. I thought there must have been something very serious going on. I called the local police force and drew it to their attention. They were going to look into it. I am still not sure what happened, but I got a little upset about it because of the way they handled that situation.

It seems to me there could have been some kind of other indication, some kind of code or something, to indicate that they do not have to drive at that excessive speed in order to get to a particular spot.

Chief Wales: I would agree with you that what occurred would appear not to be necessary in your eyes as to what you observed occurred at that time. However, it depends on what information was fed to the police to initiate their response to that call. It could well have been that there were bikers there, or whatever the case may be, and one has a gun, a firearm. They are threatening to shoot up the place or they have threatened to shoot someone or they have injured someone. It would depend on the information that initiated the response to that call.

Mr. Epp: I agree with that, but if that were the case, would you not agree with me that you would not be dispersing them in about three minutes and that would be it?

Chief Wales: Upon their arrival--

Mr. Epp: They find they do not have a gun.

Chief Wales: --they find their information was not correct.

Mr. Epp: I can agree with you the information may not have been correct, but it seems to me that it would take longer than those few minutes to determine whether the information was correct or not. If they had been there for half an hour, I could maybe understand that they did a full investigation.

Obviously, it was a very sparse investigation. Let us assume for a moment that they were told they had a gun. It would not take them three minutes to determine they did not have a gun because there were about 12 people there, 10 or 12 people that they would have to search and go through and find out whether they had them on their bikes and so on.

Mr. Chairman: You may be a little naive, Mr. Epp.

Mr. Epp: My point is that some kind of code or some kind of language has to be worked out whereby we avoid these high-speed races or whatever in the hope of avoiding some serious accidents.

Chief Wales: Codes are used to determine the type of call they are going on and really what is required, whether it is an urgent type of thing, whether it is a life and death type of thing, if it is a crime in process. This is all done by code.

Mr. Chairman: Are there any other questions? Chief Wales, I just want to talk to you briefly. We have had a great deal of discussion about civilian review boards and complaint bureaus and things of that nature. I note that the report of the Ontario Police Commission indicated that when there is a complaint made to the commission, that is referred back to the local chief for action. Then if the person making the complaint is not satisfied with the way the chief handles it, it would go to the local commission.

As you know, there have been a number of judicial inquiries and royal commissions and we now have an act that applies strictly to Metro. The Solicitor General on a number of occasions has attempted to bring in a province-wide act and he seems to have been frustrated in doing that. The police themselves seem to be opposed to the act or, quite legitimately, they want to make sure their rights are protected in any legislation that is brought in. I note that the commission has a complaints bureau. I agree with the idea that initially the complaint should go to the chief on a province-wide basis because the chief is basically responsible for discipline on his force.

I was wondering if the complainant isn't satisfied within a very short period of time--I can think of a maximum of a week--with the way the chief handles his complaint, if it could go to the Ontario Police Commission, right to the commission, which would have a full-time complaints bureau. Then if it conducted a hearing, there is no reason why somebody from the commission couldn't attend in Orillia or Kapuskasing or North Bay or Windsor and hear that particular complaint and then the commission could make that decision and the local chief and the force would be bound it.

The commission, in setting up a complaints bureau, of course, could have--well, they are all civilians-- certain civilians appointed to it, which might satisfy everybody, or at least they would have a good cross-section of opinion on the commission. But



there seems to be so much controversy or difficulty in what I would think is basically a rather simple task. There is the Ontario Police Commission with all its expertise, excellent staff and manpower, which could set this up on a province-wide basis and take it away from the local force once the chief feels he can't handle it or the complainant is not satisfied with the chief's decision, out of that venue. The commission would become expert in that whole area.

We have a situation now where we have a bureau in Metro. We don't have a similar one in Hamilton, London or Ottawa where there certainly should be something just as important as exists in Metro. I realize the one in Metro is on a trial basis, but to avoid the criticism and the continual complaints about the complaints procedure and to try to satisfy all the parties who are involved, wouldn't you think that it would be an appropriate role for the Ontario Police Commission to take over that whole jurisdiction and service to the public?

Chief Wales: I think the system that the municipal forces are using at the present time is working and working well. Maybe it wasn't working in the Metropolitan Toronto police; I don't know. I think it is working well. There are the three steps you have outlined. The police deal with it in the first instance, then the local commission or committee reviews it if the complainant is unsatisfied, and then there is a further step to take if the complainant is still not satisfied, namely, to take it to the Ontario Police Commission. I think the system is working well. I don't know that you hear of too many difficulties in other police forces about the way the system is working now. It seems to work and work well.

11:20 a.m.

Certainly it would be a large task for the Ontario Police Commission to take that on. I would think before any consideration was given to that type of procedure we should watch the pilot program that is in effect in Metropolitan Toronto to see how that type of board works. Basically, it would be similar if the Ontario Police Commission was to deal with all complaints against police throughout Ontario. I think the system we have now is working and working well. It may need some fine-tuning as time goes on and society changes, but I think basically it is doing well.

Mr. Chairman: Any other questions? Well, thank you very much Chief Wales for your attendance and for your brief. We appreciate your being here. I understand that Mr. Johnson and Mr. Wilson have agreed to change places in the timing of their appearance here, so we will hear, first of all, from Robert Wilson, co-ordinator of the Municipal Police Authorities. Do you have a brief, Mr. Wilson, or are you just going to make some comments?

Mr. Wilson: I have some notes I will be glad to hand over to your secretary.

Mr. Chairman: You are the co-ordinator of all the local commissions and committees. Is that it?



Mr. Wilson: Yes. Our association represents all the authorities, those of the committees and the commissions. We have over 200 members. We carry on an educational program. We have two major conferences, one in the fall and one in the spring, in which we deal with technical matters and with resolutions from the commissions. We are the organization which, by and large, represents these authorities in their dealings with the Solicitor General or with other agencies of government.

At the outset, I would like to state that my association wholeheartedly supports the concept of the Ontario Police Commission and the work it has done in the past and is continuing to do. We want to assure the committee that we have at all times had excellent co-operation from the commission as a statutory body and from the individuals who are employed in the commission. As you can well imagine, in my own position I frequently need information, which is always provided by the staff of the commission, not only completely and effectively but with the utmost co-operation. We are particularly grateful to the commission for making it possible for us as an association to produce a procedures manual for the use of these authorities, and we are hoping this will be distributed to our membership at the spring conference at the end of April. We think this will be an important document that will assist many commissions in carrying out their functions more effectively.

While it is our opinion that the concept of the Ontario Police Commission is one that is universally accepted and supported, there may be some problems that arise and that really involve the need for a more precise definition of the role the commission should play. Because of changes in society and the need for police services qualitatively in a complex society, the commission may have to redefine its aims and this may have to be a continuing process.

The commission has been extremely sensitive to this need to adapt to changing conditions. The year 1981 was, indeed, an important year in the life of the commission when many changes were made that we feel have profoundly influenced the direction it is taking. These changes were not only justified, but they were timely, and we especially commend the commission on the more intensive role of supervision of local forces that is inherent in their new inspectorate service. It is the view of the Municipal Police Authorities that the prime responsibility of the Ontario Police Commission should be that of supervising the level of service provided by police authorities through the municipal police forces of the province.

Further, the commission has a responsibility to advise forces and authorities on ways to improve the quality of their services. It is our view that inevitably standards will have to be set for municipal police services and that the discretion of council will have to be guided and quite probably limited to ensure that these minimum standards are met. We feel some system of accreditation of police forces is probably very desirable and that there should be some relationship developed between provincial grants and accreditation. In other words, if you fully meet the accreditation requirements, then you might be eligible for a more substantial grant than those municipalities that decide to go it at a lesser degree.



As it is now, the Ontario Police Commission is in the position that it advises the boards of commissioners on changes that are needed to improve and raise the level of their service. In many cases, these changes will require additional expenditures. It is entirely possible--in fact, it has occurred--that the additional expenditures will become the subject of debate in council when the board of commissioners presents its budget and may result in the Ontario Police Commission being forced to arbitrate.

We feel the situation would be greatly improved if standards were developed progressively, if municipal councils, boards and committees of council were made aware of these standards and if the level of grant were related to the success the individual municipality had in achieving the standard. There may be a difference of opinion with regard to the role the commission should play as the final arbitrator of disputes involving members of a municipal force which may arise over disciplinary matters related to the code of discipline of the Police Act. We know this is a very difficult role for the commission to play, and the police association seems to feel that the judgement of the commission is biased towards the needs of management rather than towards the needs of its members. We, therefore, suggest that the commission give consideration in its further development to establishing within the general organization a body that would conduct these appeals and that, though part of the commission, would be distinctly and visibly separated from the other aspects of the commission, which deal primarily with the quality and effectiveness of police services.

One of the facts of municipal life in the 1980s will certainly be that the cost of providing police service will escalate. It is not simply a matter of increased costs resulting from arbitration or negotiations, although these have a profound effect on the total cost, but rather that our society becomes more complex and the problems of policing also grow more difficult. The solutions require a higher degree of sophistication and, therefore, it may be expected will be more costly. An example would be the civilian complaints program you have just been discussing. Whatever the pros and cons may be of different approaches, I think there is general agreement on the necessity for this kind of facility, but it will cost money. The same thing is certainly true of training and so on.

On the technical side, the cost of providing specialized services, including computer services, is going to be reflected in the total cost of providing the police service. As we have indicated earlier, frequently the changes implemented will have arisen from recommendations of either the government or, in many instances, from the Ontario Police Commission acting as an agent of government. If these changes should result in an appeal by the council from the budgets submitted by the local board of commissioners, we feel quite strongly that the Ontario Police Commission will have to strengthen that part of its organization that receives and adjudicates the appeal so that it can cope with what is certain to be a very complex matter.

11:30 a.m.



The Police Act itself, which provides for the appellate process, probably contemplated a much less sophisticated system of municipal government and budgeting and many fewer problems than exist at the present time. Certainly the act did not contemplate the widely increased responsibilities of municipal council.

It is unfortunate that the provision of services which directly affect the individuals--things like roads, traffic control, recreation, garbage collection--are items which inevitably will hold a high priority in the minds of citizens and therefore in the minds of their political representatives. The less visible, and therefore less comprehensible, services, such as policing issues, are going almost of necessity to appear to the council as being an unnecessary burden.

The situation is greatly exaggerated when the tax dollars are not increasing at a rate which is comparable to the increase in the costs or in the perceived needs for improved service to the public. We would therefore suggest that in this changing situation the Ontario Police Commission must look at a variety of issues if it is to arbitrate or resolve these differences. It will probably be impossible for them to resolve the problem solely from the point of view of police services, and it certainly will not be possible to resolve the problem solely on the basis of budgetary accounts or financial statistics and the like.

The commission is entering into a highly sensitive area where it will have to impinge, at least to some degree, on the priority-setting ability of councils. To the degree that they do that, their decisions are obviously going to be ill received by the councils. At this point we cannot suggest to you a complete solution to this problem.

It does seem to us that the probability of the problem increasing is very great and that the solution may eventually lie in the development of a system comparable to that of the Ontario Municipal Board. We further feel that it may be desirable, as in the case of decisions of the OMB, that there be some appeal to the cabinet against the decision of the commission in respect of the implementation of a police budget which will have a very severe effect on the total budget of a municipality.

We stated earlier that one of the functions of the Police Commission ought to be to provide forces and police authorities with information which will improve the quality of police services. It would be very desirable if this role were enhanced. I recognize that it is being carried out effectively during the inspections which take place and that members of the commission are always ready to provide their expert advice.

It does seem to me, however, that perhaps the service needs some formalization and that there should be a system which would involve not only the production of regular information through pamphlets and booklets, but which would also involve building up a library of information which could be made readily available to individual police authorities and forces. The process of continuing education on the techniques of policing should not be limited to the police forces themselves, but should also include the authorities whose decisions can only be valid if they understand to a sufficient degree the demands and needs of a police operation.



Further, it may be desirable to define more precisely the role played by the commission in this area and the same role that is played to some degree by the Ontario Police College. The average person feels that the police college is a training institute--and that certainly is its prime function--and that the provision of information ought to be with the Ontario Police Commission.

At the present time, when one makes inquiry of the commission, frequently a referral is made to the college because it seems to be the body that has the data and expertise more readily available than does the commission. I am just saying that you can get the information, but it takes perhaps more digging than is necessary, and a definition of the roles of these two organizations and perhaps some centralization are in order.

It is quite probable that this and several other of the changes that we have suggested would involve increasing staff at the commission and therefore would require an increased expenditure of funds. We appreciate the restraint under which the provincial and every other government must operate, but one must consider whether a relatively small expenditure in the areas which we have outlined would not result in a relatively great improvement in the total police services provided in this province.

We certainly must not lose sight of the fact that policing at the present time costs the taxpayers of this province well in excess of three quarters of a billion dollars. I am suggesting that an expenditure of two or three hundred thousand is really not very great in the totality of that global figure.

Mr. Chairman: Mr. Wilson, I would assume from your remarks that you are in agreement with Chief Wales, particularly with his reference that when a commission holds an inquiry or investigation under the Police Act, it should be mandatory that the recommendations of the commission be implemented. I may be getting this wrong, but you seemed to be indicating that although you are co-ordinator of a municipal police authority, you are recommending more power be given to the OPC not only in supervising the level of police services, but also from the point of view of budgeting and setting priorities and policies for local forces and things of that nature.

Mr. Wilson: I think that the act already gives them very extensive powers in these areas. What I am really saying is that if you are going to have a rational system, there must be some well-known, well-publicized standards of the levels that are appropriate to police forces from municipalities of different sizes, and that in order to affect the implementation of these standards the provincial government ought to consider relating its grants to that. The present system of a per capita grant, in my view--I am speaking now very personally--is antiquated, outdated and irrelevant and really does not have very much meaning.

In the United Kingdom, for example, where police forces meet the required standard, then the central government picks up a percentage of the total operating cost of that force. This is a very much more rational approach. I certainly think that one of the basics is the need to have certain standards developed, and I realize this might take some time, so that everybody would know what is being aimed at.

If there is a recommendation from the commission which requires 10 additional members on a local force, this should be related to some standard of service. If this were to be done, it seems to me that we would reduce the controversies which are developing between councils and commissions over budgetary matter.

11:40 a.m.

Mr. Breaugh: I want to pursue this idea of accreditation. It always seems strange to me that we have some system of accreditation in almost everything we do, but it is not really there for a couple of very important things. For example, there is no requirement for a municipality to provide fire protection. It always amazes me that there is not. And there really is not any accreditation system at work per se for police work as well.

When you say accreditation, I take it what you really mean is that you want to develop at some time a set of standards for police protection and that a municipality would have to meet those standards to qualify for grants. Or are you saying that you want to get a little fancier and say, "There are two or three levels of police work that are acceptable, and we will phase our grants in at that level so that there is a big-city police force with this standard and there is a rural standard"? Could you expand on what you mean by accreditation?

Mr. Wilson: I think it quite possible that the small, almost semi-rural, municipality has a different policing requirement than does the metropolitan area. Therefore, there might well be different levels. There would be many elements in common. For example, just on the matter of personnel, there should be standardization of the upgrading of training. We should have standardization of what is meant by physical fitness when they enter the force, and great varieties. There should be standardization of equipment. All of these would be elements that would go into the development of a system of accreditation which might not be too different from what takes place in hospitals.

Not every hospital has full accreditation, but it does operate. I am not sure that every police force would. I am just saying that this is an area where I think we are going to have to move in the future and that it is an area where leadership will have to be given by the Ontario Police Commission.

Mr. Breaugh: Doesn't it make sense, though, to begin the process by saying that everybody who wears a badge has received a set number of hours of tuition--in other words, they have all been to Aylmer--before they get to be an operational police officer? Wouldn't that be a sensible way to start it?

Mr. Wilson: Yes. There ought to be some standard so that I, as a citizen, know that no matter what police officer I am dealing with, he has had some minimal training.

Mr. Breaugh: It always boggles my mind. I could not go out and start up a plumbing operation and pretend to be a plumber tomorrow. The laws in Ontario would not let me do that. But there are places where I could probably get a job as a police officer



with no training and no experience. Somebody would dress me up in a uniform and put me out on the street. Hopefully, depending on where one went, there would be some kind of training.

Mr. Wilson: Yes.

Mr. Breaugh: That could range from very sophisticated stuff, such as what Metropolitan Toronto would do with its cadets, to a talk with the chief, such as you might find in a small town.

Mr. Wilson: I think all of the police forces now are giving some minimal training period to their cadets in the probationary period.

Mr. Breaugh: Do you have any comments to make about the controversy surrounding what size a police force should be? It seems to be moving back and forth these days. There was the school of thought that anything fewer than 10 or 15 officers on a police force was not really adequate even in the smallest rural community. Yet you see trends in police work now which say, "There may only be six officers on a police force, but they are hooked into a radio network which takes in adjacent forces"; or, "They depend on a larger urban centre as a communications centre." Do you have any recommendations to make to us and to the commission about the size of a force or about minimum standards?

Mr. Wilson: This is a very difficult question for me because my association represents the very smallest and the very largest. The very smallest may be holding on to its autonomy like crazy. I sense some movement for forces to get together and amalgamate. If we would look to the experience of the United Kingdom, they have reduced their police forces to about 48 or something like that. That is going to be the trend of the future, whether individual forces like it or not.

Mr. Breaugh: That is inevitable, in your view?

Mr. Wilson: I think so, yes.

Mr. Hodgson: I just want to get that again. Do you think that there will be a reduction?

Mr. Breaugh: In the number of forces.

Mr. Wilson: Yes. I know there will not be a reduction in the number of police officers.

Mr. Hodgson: I just wanted to get that straight.

Mr. Breaugh: One thing bothers me a little bit about the present situation and may be made worse by an accreditation system. If you accept different standards of police work for different parts of the province, if I were a criminal, given the technology that is available to me, my base of operation would be wherever the lowest standard of policing is. It also strikes me that that is not far off the present case. Criminals are wising up to the fact that with telecommunications and the sophistication of transportation they do not need to be in downtown Toronto, where they have all

these specialized squads and all kinds of people and equipment to investigate. "I ought to get to hell out of here and go some place where life is a little simpler."

Mr. Wilson: The take is surely greater in the metropolitan areas than it is in some small village.

Mr. Breaugh: Wouldn't that be a problem if you accepted the notion that there should be different standards of police work around Ontario, as there now is? A criminal element that might not want to play according to the rules would simply go to an area that is not as well policed.

Mr. Wilson: I cannot see how a system of accreditation could worsen the existing situation. My feeling is that if you had a system of standards and a system of accreditation, and if the provincial government rewarded those people who opted for the higher level of service, you would have a general raising of the standards throughout the province. I do not think you would have a worsening of the situation.

Mr. Breaugh: So you think it is that bad it cannot do anything but get better.

Mr. Wilson: No, I did not say that. I probably get around more than anybody in this room, except for some of the people from the commission, to the big and the small. I am always amazed what good service we have at all levels. I think one has to recognize that some forces are much less sophisticated than others, but then so are the problems they are dealing with.

Mr. Breaugh: Is it true that their problems are less sophisticated than others?

Mr. Wilson: I think frequently it is true. The problems vary tremendously from one area to another.

Mr. Breaugh: The kind of thing that concerns me is when I read reports that say people in rural areas are discovering that if you want to grow marijuana, don't grow it on Bloor Street, grow it in the hills. Every once in a while in the eastern parts of Ontario there is a big bust; the Ontario Provincial Police, the RCMP and everybody else all roll in.

Mr. Hodgson: That is evidence that they are doing the work in the smaller places.

Mr. Breaugh: It may be evidence that they are doing work on that particular day; but what about the other 364 days in the year? I have some concerns about that.

There is another thing that disturbs me. I heard from the police commission the other day a good deal of discussion about how in Canada we are not as disjointed as law enforcement agencies are in the United States. I believe that to be true, but I still maintain that there is some overlapping and conflict between the various levels of policing here. It is nowhere near what you would see in the United States, where there are often eight or nine jurisdictions competing with one another, and I do mean competing.



Mr. Wilson: I am not a police officer and I am not a police chief. I can tell you that as I go around the country I am amazed at the effective co-operation that apparently exists between small municipal police forces and the local contingent of the OPP. I do not really understand how it works, but it does work.

11:50 a.m.

Mr. Hodgson: Maybe you would like to suggest what you have in mind when you say there should be a minimum standard established for a police force. One of the standards I wish you would comment on, whether it is there at the present time or not, is how many policemen per capita should there be to technically discharge duties? Is it a thousand per policeman?

Mr. Wilson: This is the sort of thing where I think there needs to be not only some standard developed but also wide publicity given to it so that everybody concerned would know that this is what we feel is a required standard. I don't think they exist in any formal sense at all now.

Mr. Hodgson: It has been suggested.

Mr. Wilson: If you take the question of educational standards for entrance into the police force, this may range from, say, grade 10 to university graduation, all of the lot. There are very few areas that I am aware of where there is as little standardization. In fact, the whole theory of the Police Act and the Municipal Act is to allow municipalities a reasonably free hand in determining what is the appropriate level for their particular municipality. That is fine. I am not suggesting we get rid of that freedom of level. I am saying that in this complex society we live in it may well be that there is a need for greater standardization than we have at the present time.

Mr. Hodgson: You don't care to suggest any minimum standards that we should be working towards in all of the province?

Mr. Wilson: No, because I don't know.

Mr. Chairman: Mr. Wilson, as you suggest, there should be some difference. In policing a small community of 16,000 or 20,000 people, if there is a person who has a university degree or who has even completed high school and has had a certain amount of basic training at Aylmer and probably a refresher course, you will have a hard time keeping that person down on the farm.

As you well know, a great deal of police work is very boring and repetitious, particularly if it basically involves traffic control and things of that nature. So you won't keep those men there. They will want to move to a bigger urban centre where there are more opportunities for promotion and more interesting work.

What I think you are implying is that there should at least be some basic standards. For example, every police officer who wears the uniform in Ontario should at least attend Aylmer for that course and there should be standards of physical fitness. There should be opportunity for refresher courses and generally improving

themselves. It may be difficult because of the nature of the profession to have maximum standards or a system of accreditation that is basically similar across the province.

Mr. Wilson: I suppose one of the implications of a system of accreditation would be a reduction in the number of forces. I always come out and say what I please. It would really be difficult to think of a four- or five-man force being able to achieve accreditation in the sense I am talking about. It may well be that these small forces are no longer particularly viable. I am saying that as an expression of my own opinion and not necessarily that of the management.

Mr. Chairman: Do you feel, for example, there should be more regional forces or that the OPP should be expanded into the smaller communities and do away with the smaller forces?

Mr. Wilson: I think you have to face it that crime does not necessarily remain within the kind of boundaries that we would like it to remain. Certainly 50 years ago a small rural village had a very limited police role and, in fact, its police role is still limited, but increasingly it may be that it may have to have some kind of an investigative potential to fit in with the total of police services. I think the day of the limited police force with its limited manpower facilities and its limited financing is drawing to an end.

I will also say--and again I am speaking as a private individual rather than representing the Municipal Police Authorities, although I don't think they disagree with me--it is inevitable that the funding for police services is going to have to shift away from the municipal real property tax.

Mr. Breaugh: Isn't that the basic problem?

Mr. Wilson: Of course it is the basic problem.

Mr. Breaugh: Can you see Napanee or Picton taking the seven or eight police officers that are there and paying them Metropolitan Toronto wages because you have demanded that they meet Metro standards? That is never going to happen.

Mr. Wilson: I think there are many aspects to wage determination other than that. All I am saying to you is that as we move towards some degree of standardization, which you can get by a system of accreditation or by a system of centralization perhaps, then it is going to result in some increase in your costs. You are going to have the increase in cost inevitably.

Mr. Hodgson: We have been increasing our grants pretty well every year. A regional police force or a metropolitan police force gets a higher grant than the rural municipality with only four or five men.

Mr. Breaugh: When you get right down to it, it is never going to happen that the police committee of a town council accepts accreditation, says its officers have to go to Aylmer and all have to be properly trained and that it is going to pay those guys



\$28,000 a year. That is never going to happen. They are not going to put eight people in that kind of community at that kind of salary on the street. It would be a local disgrace.

Mr. Wilson: Can I give you an actual example? I am not going to name the municipality, but I worked with this municipality as a private consultant. I found that their police costs over a 10-year period had escalated at about 350 per cent or something like that. While there had been some modest increase in the per capita grant from the province, which incidentally has not matched the increase in inflation, this particular village or town, because it has had a decline in population, is in actual fact not getting any more dollars than it did 10 years ago, although its costs have escalated steeply.

I am saying to you that the question of a per capita grant for police service from the province really doesn't make very much sense to me. Secondly, to expect real property to bear the total or as large a share of the cost of policing probably doesn't make very much sense.

12 noon

Mr. Chairman: In other words, you are indicating there should be more provincial money. It is somewhat like the situation in the education system in the province.

Mr. Wilson: That is right. You have to regard it much more like an educational system.

Mr. Hodgson: You talked quite a bit about the training a policeman should have prior to going on the force. You spoke quite a bit about Aylmer. All the reports I get is that it is very good for the experienced policemen. But our community colleges offer a good course in policing. I would think if you are talking about a standard, every policeman should spend a year or two years, the same as a plumber or anyone else, at a community college and graduate from there before he gets on a police force. That would be a good standard to start on for a policeman entering any force.

Mr. Wilson: There is a good deal of work taking place at present on the question of the role of community colleges and their curriculum and so on. As a result of collective bargaining--and I am not here to argue the pros and cons; these are facts--the fact is that the starting rate for a probationer is now roughly equivalent to, or it may be slightly higher in some jurisdictions, what you would pay a graduate engineer starting into his profession. The difference is that the probationer may be entirely untrained. They will both be inexperienced but at least your graduate engineer has had some professional training.

I am inclined to agree that there ought to be more preparatory professional training before entering into the profession, certainly in the larger jurisdictions. I think this will probably be inevitable. It probably should be through the community colleges, but there may be alternatives.

Mr. Epp: Some of this has been touched on. It has to do with the per capita grant that is now being given to the various municipalities, \$12 to the smaller municipalities and \$17 to the regionalized municipalities.

It seems to me the nonregionalized municipalities, such as Windsor and Kingston and others, require that money equally as much as the regionalized municipalities. How do you see us correcting that particular problem, Mr. Wilson? You recommended the British model as something to look at.

Mr. Wilson: I suggested that instead of having a per capita grant the province should be prepared to pay 40, 50, 60 per cent of the total operating budget of the police force provided that police force meets the accreditation, the sort of standards that are level. I think that is the direction we may eventually move in.

Mr. Breaugh: Would it not be sensible if we adopted, province-wide, the same privileges for the good people of, say, Kingston as we do for the citizens of Kaladar? If you live in Kaladar, your police costs are borne by the OPP and by the province, and if you live in Kingston a fairly substantial portion of your police costs are borne by property taxpayers.

Mr. Wilson: That system is ludicrous. I am hoping steps are being taken to correct that. Of course it is ridiculous.

Mr. Epp: Is there any reason to believe there is some movement afoot to change the way the moneys are now being granted to the municipalities to pass on to the police force?

Mr. Wilson: I am unaware of it. You know me well enough; I just go around preaching gospel.

Mr. Epp: You've been doing fairly well this morning, preaching that gospel.

Mr. Chairman: Getting back to the point about raising revenues for policing, you suggest the province should pay a percentage of the cost of policing in a community. How would the community raise its share?

Mr. Wilson: I presume from the only source they have, namely, real property. I would hope my system would relieve the burden on that.

The per capita grant is a very discriminatory method. I really did not expect to have to discuss this. If you are in northwestern Ontario, it may cost you--because of the distances involved in transporting prisoners, for example--five or six times as much as it does in southwestern or eastern Ontario. So the idea of a per capita grant causes real problems and real unfairness. If it could be related to the total budget, the funding of these police services could be perhaps through any number of systems you could devise that would be better than what we have now.



Mr. McLean: A lot of the questions I had have been answered, but it appears to me that Mr. Wilson has never been on the other side when you have to raise money. It appears to me you know how to spend it fairly well and like to get a hold of it. I think if you sat on the side of the politician in the municipalities which have to establish a mill rate and work within the guidelines of that city or town which is involved, I hate to think--I haven't a copy of your remarks--but in your initial remarks I believe you referred to the OPC to have more control and to make recommendations to the local area to have more police officers or to update their services.

I think we have to realize the funding has to come from the taxpayer, whether it comes from the local taxpayer or from the province. I can see you are thinking of getting it around to the province so that you figure you will get more, but the control still has to be left with that local city or town that has the police force. I would hate to see the OPC have the control where they could recommend to the local commission that they would have to have another two, three, four or five police officers and the taxpayers and the elected people not have any say in whether they should or should not have. There has been a lot of discussion on that since I indicated to the chairman I wanted to ask a question. That leaves me a little concerned with regard to the funding.

I think the local police commissions are responsible to the elected people and that is the way it should be. I can't see taking the policing and putting it all under the province.

When you talk about standardization, I don't think a police officer in a town the size of Alliston has to have the same qualifications as a police officer in the city of Toronto. I think the rate of pay would indicate the difference in the qualifications that person would have to have. There is no question in my mind that the small towns are probably as well, or better, policed as the larger cities.

Those are my comments. I had some concerns and thought I would relate them.

Mr. Wilson: The only comment I have to make is that I regret if I gave the impression I wanted to destroy local autonomy altogether. I would just like to see the role of the Ontario Police Commission strengthened as being the organization that gives assurance to the general public that all municipalities are providing an adequate police service.

12:10 p.m.

Mr. Kolyn: Mr. Wilson, I had the opportunity of living in a small village for years. We went from a two-man police force to about 17 at the present time, for various reasons. While I was there, the people who came and joined the police force were relatively young and eager, with limited or no experience at all, and under the guidance of the police chief who was there a number of years they were properly trained in that particular village.

I always found it a good training ground for policemen because they were young men, and I was a fairly young man at the time, and they moved on into Hamilton or Toronto or somewhere. But they always said that it was a good training ground for them because of the common-sense approach that they were taught in a small town. You have to be very careful because everybody knows one another, and it is a little different in a big area.

So it is a valuable training ground for a young policeman to go to a small area, get training and then he will be probably accepted quicker in a bigger area once he has some broad training, instead of going to a police college for six or eight weeks or how long they go.

Mr. Wilson: I am really not sure. I do not think there is any substitute for the technical training you get at the police college, but I agree with you that I think the small towns--not always, but in many cases--do provide an excellent background of experience. I think it is also probably a pretty different experience from what you get in a metropolitan area like Toronto.

Mr. Chairman: Mr. Wilson, I just have one question. There has been some complaint that local authorities, local commissions, committees of council are not open enough to the public, that they are mostly in camera meetings, secret meetings, meetings held at odd times of the day which makes it inconvenient for anybody from the public to attend. Have you any comments on the recommendation that the OPC should set criteria for the conduct of meetings of that kind?

Mr. Wilson: I would think that would be one of the simpler set of criteria to establish. I would think that all meetings ought to be open to the public with the exception of those dealing with individuals or with highly sensitive investigations. I had a fair experience with the city of Ottawa, and my impression there was that the moment they threw all meetings open to the press that was the moment when the press ceased to be interested in attending the meetings.

Mr. Eichmanis: If I may, Mr. Wilson, in your opening remarks you touched on the OPC's portion of the disciplinary hearings or disciplinary proceedings and you indicated that perhaps a separate unit of the commission be made responsible for disciplinary hearings. I wonder if you could expand on that.

Mr. Wilson: Well, it is simply that if there is a perception, and there certainly has been in the past, that the commission tends in these matters to have a bias towards the needs of management--which are the needs of policing, I suppose, as they see it--then every effort should be made to dispel that so that these matters were dealt with in terms of a strict application of the law and the requirements of the law.

I think it is very difficult to do that if on the one hand they are dealing with efficiency in these concepts, and I am simply suggesting that perhaps a solution is to establish one element of the commission that is not involved in this and that deals with these disciplinary matters purely in terms of infractions of the code of discipline and so on.



Mr. Eichmanis: What you are suggesting then is that the hearing that an individual police officer gets from the commission on the appeal is not fair?

Mr. Wilson: No, I am not suggesting it is not fair. I think they are probably very fair, actually. But I am saying that to be assured that everybody sees them as being fair, it might be wise to have a unit that exercises that function which is distinctly separated from the other units which are more interested in the questions of efficiency and so on.

Mr. Eichmanis: Do you have any suggestions how that should be done? Have more board members and have a number of them just doing that alone?

Mr. Wilson: It may well be that that would be the answer. No, I do not have specific suggestions. These are matters that are being discussed right at the present time in the review process that is taking place with the Police Act, and hopefully as a result of those discussions there may be some development in this area.

Mr. Chairman: Have you any comment about the make-up of police commissions? As you know, there are recommendations as a result of royal commissions and judicial inquiries that there be more local people, more elected people as opposed to provincial appointees or local appointees. Have you any comment on that?

Mr. Wilson: My organization--and personally I agree with it--feels that there in a number of cases you can make a strong case for increasing the size of commissions from the present three to five. Unless you are a region, the act provides for a three-man board of commissioners, which means the mayor is really the only elected member. We feel that it should probably be a five-man board of commissioners, with the mayor a member and then another member designated by the council to represent that.

Mr. Chairman: Okay. Thank you very much, Mr. Wilson, for attending. We appreciate your co-operation, sir.

Mr. Johnson? Mr. Johnson is president of the Police Association of Ontario. He is the mouthpiece for the boys in blue.

Mr. Johnson: Thank you, Mr. Kerr. I am not so sure I appreciate your comment on calling me a mouthpiece, but perhaps that is a function I do perform as far as my members are concerned.

I should indicate at the outset that I do not have a prepared text. I am here on rather short notice, but I appreciate the opportunity at least to be here. So I thank you for that.

I listened with interest to the people who have preceded me, particularly Mr. Wilson. There are some aspects on which we would appear to be totally in agreement and I will try not to be too repetitious.

Over the last 15 years at least there were times when I had dealings with yourself, sir. Maybe that is why it warrants the terminology "mouthpiece." In any event, as far as the Ontario

Police Commission is concerned, I think over the past 15 years no organization has been more critical than ours. The main criticism we had was that these people work so closely with the management of forces that they actually became part of it. They aligned themselves totally with the forces. We found that when there were complaints from our organization, the attitude was more to go in and cover up situations and whitewash them--the term we have used over the years--than to actually ferret them out and deal with the problems as they were put to them.

I might say that in the past year I have been rather pleased with some of the changes that appear to be coming forth, and I think that Mr. MacGrath and our Solicitor General (Mr. McMurtry) should be commended for some of the changes we see happening. I would not go so far as to say they are all the changes we would like to see take place, because they are definitely not.

One particular area that does bother me is the credibility of the Ontario Police Commission. I think that in the past year we have seen there has been a marked change in attitude, and that change in attitude can only give the Ontario Police Commission the stature and the credibility it needs in the police community.

12:20 p.m.

It may seem very strange for a person like myself to be saying that there has to be an organization that has some control, some power. We believe at this point that the Ontario Police Commission should be that organization and that they should have control and power. I am not talking about unfettered control and power, but surely they should be given the power to instruct and to give an order if it is necessary, rather than just to be strictly in a recommending or advisory position.

We have seen too many instance where their recommendations, had they been carried out, would have been instrumental in correcting a problem but they have been totally ignored by a local board or by a police chief. I think that is improper and I would like to see them given more power, albeit I heard the remarks of the gentleman on my left. I am saying I do not believe that power should be unfettered.

With respect to the changes that we see taking place right now, I am not happy with changes happening so slowly in the area of their inspectorate or, as they were previously called, their advisers. I have said for many years that this particular arm of the Ontario Police Commission was nothing but a haven for senior police officials. They perform strictly on a management basis and were aligned, before they ever came to that organization, with management. How would you expect them to perform differently when they came under the Ontario Police Commission? I think that is an area that must be representative of the police community to gain the credibility that is necessary for them to do the job they are expected to do.

You may, and I presume you will, ask me the question, "How do you feel that they can attain that credibility?" I believe that they must be representative of the rank-and-file police as well as



of the senior or administrative arm of the police forces. Therefore, I think we can come up with a happy medium or a blend of representation of the constable, sergeant, staff sergeant, inspectorate, superintendent, deputy chief or chief, if that may be the case.

These people normally operate in pairs, and I see no reason why they would not complement one another's duties when they are attending to do an inspection of a police force. They then would have the ability not only to confer directly with the management of the force but also to confer directly with the representatives of the rank and file, namely, the police association.

I have been assured that when these inspections take place, the police association that normally is the representative of the rank and file will be consulted and will be apprised of what is going on. There is one area, of course, that is still a grey area. When there is a report or study done, will they be privy to the recommendations? I would say that must be compulsory and it must be a must.

These are some of the areas I have heard about, as I said. The people who preceded me talked about standardization. My members are very interested in standardization. They are very interested in the professionalism, as we see it, of our particular vocation.

We are very interested and very active at this point with regard to the education of our members. I think that education, though, must go further than just the education of the rank and file. In many instances in my experience in the last several years, the lack of education seems to be very obvious at the administrative levels of the force. I am not talking at the chief of police level alone; I am talking about the level of the police commission. I think we have people sitting on police commissions who are no more suited to that job than if they were going to do something they knew absolutely nothing about, which I find is mainly the case.

Just recently there was an inquiry, and it came out at the inquiry--although we became aware of it from our own representatives in the area--that the chairman of the commission was quoted as saying he did not give a damn about the Police Act; he was not bound by it and did not care about it. Those types of comments are completely irresponsible, and the people who are sitting at the very high level of administration of the force, namely, the police commission on a local level, should know what their scope of office is, should know what their duties are and, if necessary, should receive training in that respect, be it at the Ontario Police Commission or at the Ontario Police College, where all the police officers are trained.

With respect to training of police officers, I believe we will soon see the day when guidance people will be guiding people who have an inclination towards police work into that particular vocation. I hope we will see the day, as we do in many professions that you gentlemen are involved in, where the education process is done prior to applying for a police job, and that particular

application then would be given some credence with respect to what the person's qualifications are, if he has gone through a law and security program in the community colleges, or if he has spent time, I might add at his own expense, going to the Ontario Police College.

We may be talking strictly in hypotheses at this time, but the wheels are in motion. I know, because I sit on several committees along those lines to give some standardization, and that is what we are working towards. I hope we will see within the next decade, and I hope sooner than that, the courses at the Ontario Police College receiving some credit status toward BA degrees at the university level.

I know that right at the present time the community colleges are playing a very active role in providing courses in conjunction with and complementary to the Ontario Police College. But I would say that the Ontario Police College is the only facility as we know it, and the only recognized facility as far as my members are concerned, to train police officers.

If we don't get the credibility or the acknowledgements from the universities, or from the educational system as we know it, then I would say the police in this province in particular should go strictly with the Ontario Police College, and no one can be hired into the police profession unless he has had that standard of training. I suppose what I am saying is, if we cannot get it one way, we close the shop and make it a closed shop, and you won't get into it unless you have had that prescribed course of training.

I heard the comments from the gentleman on my far right with respect to pursuits and high-speed pursuits. I would say that is one area where there has to be standardization, but I would also say to you, sir, that I do not know of any instances, and I have looked at many training procedures, where you can instil common sense or take away the discretion of the police officer.

Training in the art, if you want to call it that, of pursuit driving or driving in safety is something that can be instilled in a police officer at an early age when he comes to the job. It should be something that is done on a standard basis, and I think the place for doing that is the Ontario Police College. I think it can set up proper courses. There are enough of them set up as far as safe driving is concerned; you can look at the Great Britain experience, or you can go to the western provinces, where I believe Calgary has a driving course. I think it should be mandatory.

As far as other training is concerned, there are other aspects of training that are unique to our service in particular, the matter of firearms and so on. I believe Judge Greenwood recently released a report which I believe has a lot of merit. I think he addresses the matter of the safety of the officer with respect to the equipment he carries.

I don't subscribe to the views of some chiefs that our officers will take on the appearance of some type of cowboy, with an open-style holster. I believe the open-style holster provides a



much safer holster than the present widow-maker style holster which the officers are required to wear. Judge Greenwood also made some observations with respect to the type of baton and so on that the officers should carry.

I think it is a many-faceted field we are dealing with in the training of officers, and I am very interested on behalf of my members to see that they are well qualified and well trained. Of course, the other aspect would be that they are well paid, and I have heard the gentleman seated here speak about the pay. I would say this, sir, that if a small community did away with its local force and brought in the OPP, it would be paying top wages.

I would also say to the gentleman on this side that the people in small forces prove to be in many instances, if they are well qualified and well trained, more rounded-out police officers than those who serve in a larger community and who have the advantages of having many people and being able to specialize. So don't talk down a small-town police officer, because he may be as good as, if not better than, a large-community police officer.

12:30 p.m.

Mr. Breaugh: I want to get your opinion on a number of matters. The first thing that bothers me a bit about police forces from the police officers' point of view is the matter of discipline. I think everybody recognizes that the police force is a different kettle of fish than perhaps some other jobs and there is a discipline requirement there, but we haven't seemed to solve the kind of ridiculous problems where an officer has a moustache that is too long, or his hair goes over his collar.

In any other occupation, it would seem ridiculous these days, for example, to cause a teacher to lose his salary, to be fired, to be suspended, or to have some disciplinary action taken about the way he dresses or the length of his hair or something like that. Yet a police officer gets himself in an awful situation because of regulations set by local police commissions if he violates those regulations that often have to do with hair and moustache and things like that. What mechanism can we get to resolve that one?

Mr. Johnson: I purposely didn't address the matter of discipline, because I thought you or one of your colleagues would raise that. Not being facetious, it is an area that probably is a hair-raising situation in our particular profession. You are talking about personal appearance, and I think that's a most important factor as far as the police service is concerned, albeit the regulations controlling the particular appearance of a police officer, for the most part, are archaic, probably 100 years behind the times.

One criticism I could have, and have had in the past years, and I don't know whether it has been changed at this time, is that there have been dummy or mock sets of rules and regulations sent out to various police forces by the Ontario Police Commission, suggested as the type of rules and regulations they should have. From a management point of view and certainly from my point of view, they are so far out of date that they just have no bearing on modern-day management standards. They are ridiculous.



I would say, at the risk of incurring wrath from some of my own members--I am old-fashioned, I suppose, in my views--that a police officer should present a clean-cut appearance and a good image. That doesn't mean he can't be clean and tidy and have his hair a little longer than perhaps would have been acceptable 10 or 15 years ago. That doesn't mean he can't look reasonably normal as far as the length of his moustache is concerned.

Certainly our police administrators have more to do than to bother themselves with whether the moustache hangs more than an eighth of an inch below the aperture of his mouth or something of that nature, and that is just the way these particular rules and regulations are worded. They border on the ridiculous. They give rights to administrative police officers to march into someone's residence to see if he is there, to see what he is doing and to take money from his pay without so much as a by-your-leave.

As I say, some of these areas border on ridiculousness and, as far as the matter of police discipline is concerned, that has long been a concern of ours, in my particular view.

I still hold with the view, albeit there have been some changes in the Ontario Police Commission, that the commission cannot continue to serve as an appellate body. As long as it has aligned itself with management and unless there is a drastic change in that aspect, it cannot continue to serve as an appellate body, because you run into what we describe as ritual horror stories as far as investigations have been carried out under the Police Act.

The police commission, as advisers, and I must say that I am speaking on past performance and not on the present performance of the Ontario Police Commission, recommended charges. The charges were laid. The advisers were reportable to the then Ontario Police Commission, a tribunal of three. We knew for a fact the information was being fed to these people, and yet they were the appellate body and they sat in judgement. So I think we have to lend a lot to the old adage that justice must not only be done but it also must be seen to be done, and it wasn't being done, in our eyes.

It was already a biased and prejudiced system in effect and we weren't getting justice as we understand it. I think that's very important, because people who enforce the laws are just as entitled to justice as modern-day society now wants it, having cognizance of their particular rights, giving them the advantages of not having to make statements if they don't wish, giving them the advantages of being represented by counsel, giving them the advantages of having a proper trial with proper representation and having a finding based on the burden of proof beyond a reasonable doubt, as opposed to the balance of probabilities that admits hearsay evidence and so on.

I don't think that's fair, and I don't think modern-day society would settle for anything else than what I have just suggested. I don't think our people should be subjected to anything else, albeit we recognize that, because we are dubbed quasi-military, we have to work under strictures that the everyday citizen would not have to work under. We recognize that and we take on those obligations when we take on the position of a police officer, but that doesn't mean we give up our total rights.



I cannot come across too strongly in saying that, as long as the Ontario Police Commission assumes the role it is now in, it will never be acceptable as an appellate body. It wouldn't matter if the Lord Himself were sitting as the chairman of that appellate body. So it causes a serious problem, and I think that perception means a lot as far as the image of the police officer is concerned.

Great strides have been taken by Mr. MacGrath, Mr. McGrenere and Dr. Hockin in this regard, and I hope they will continue to take such strides and better their position and, by doing that, better the position of the rank-and-file officers.

Mr. Chairman: Do you think the OPC could continue to act as an appellate body if it structured itself in such a way that different people were hearing the appeal, for example? Or are you suggesting that there should be a formal hearing with counsel and somebody appointed to sit to hear the facts of that particular hearing? Or are you saying that the commission, or somebody within the commission functioning only in that capacity, could hear appeals of that kind?

Mr. Johnson: Well, sir, at this particular point I have to stand by the position my organization has taken with government when we are dealing with the recommendations we are making to amend the Police Act. Our particular position is that we have to have some prescribed or set-down code of offences. Right now we deal with major and minor offences. The determination of what is major and what is minor is strictly at the whim of the chief of police. So we find that people who are late for duty are charged with major offences in some forces and with minor offences, as the case should be, in other forces.

It is, as I say, another situation that borders on the ridiculous and it is certainly susceptible to personal feeling. We would like to see the procedure changed so that you don't run into that as often. I think what we are looking at, and perhaps some of the chiefs of police would concur, is some type of in-house, informal discipline that can take place for very minor infractions.

Under the present Police Act, when a police officer is charged with a major or minor offence, he carries that conviction, if he is convicted, for the rest of his days as a police officer. He has no right to have it expunged after a couple of years or five years, as a criminal does. Never. It can affect him down the road with regard to receiving service medals and with regard to promotion and so on. So that's an area that has to be changed.

Our particular view is, if there is a minor charge laid, that charge can be heard by the chief of police, if that's to be the case, but the appeal on that charge would go by way of perhaps what we see happening in the private sector, by way of an arbitration. Let it be determined by an arbitrator, either a single arbitrator or a tribunal composed of one arbitrator with two sidesmen.

Mr. Chairman: Can you see any reason why the OPC couldn't be instrumental in setting up that arbitration? In other words, there doesn't have to be--

Mr. Johnson: Sir, you already have an arm of the Police Act, if you want to call it that, or a section of the Police Act that could be enacted. The arbitration commission could adequately provide the panel of arbitrators as it does in interest and rights disputes now. There is no reason why that couldn't be enlarged to cover the disciplinary aspects, because rights disputes pretty well fall within that ambit.

With regard to major charges, our view is that when a major charge is laid that hearing in the first instance is done before a provincial or county court judge, and that decision then becomes subject to appeal through the courts.

12:40 p.m.

Mr. Chairman: You don't think the chief should be involved at that stage at all?

Mr. Johnson: Not at all.

Mr. Chairman: What do you mean by a major disciplinary charge?

Mr. Johnson: A serious charge, as I said, is at the whim of the chief, and I think that has to be defined. We have to codify what's major and what's minor, what can be dealt with in-house and what can't be. At the present time it covers a wide ambit.

I have seen discreditable conduct dealt with on a minor basis and I have seen it dealt with on a major basis. It is probably the catch-all in the Police Act: If you can't throw anything else at them, hit them with discreditable conduct. It's something that emanated from the old military traditions, I think.

Mr. Chairman: You think it should be codified in some way.

Mr. Johnson: Yes. I think that if the present meetings bear fruit, then maybe we will see an amended Police Act that will encompass some of these things that all parties in the police community see, because all parties at the present time are privy to those particular meetings.

Mr. Chairman: Does this involve citizens' complaints as well, or is this strictly an in-house matter?

Mr. Johnson: I think it could go that far. In fact, I think citizens' complaints will have to come into the area, because one can't be divorced from the other; it's a disciplinary process.

The only thing we are concerned about, again, is the rights of our members. I have seen and am quite familiar with the complaints procedure that has just been enacted in Metro. I'm not saying this is something that has to be province-wide, because many forces have their own internal investigation units which look after citizens' complaints.

Probably the greatest inequity I see in the systems that are set up is that they have nothing to say to the individual who makes



a frivolous or vexatious complaint. It is my experience that 90 to 95 per cent of the complaints that come to police forces and are found to fit in that particular category are being used as a ploy to bargain because there have been charges in the criminal court and so on. There is absolutely nothing that says to the citizen: "If you make that complaint and it's an erroneous, frivolous or vexatious complaint, this is what's going to happen to you." Some teeth have to be put into any type of complaint procedure not only to bite the policeman but also to look after the individual I have just described. It's a two-way street.

Mr. Breaugh: One other thing I wanted to ask you about was the use of civilians. I know that in many local associations that becomes a sore point, because essentially now management reserves the right to take almost any position save a patrol position and make that a civilian one. Do you have any comments on that from a police officer's point of view?

Mr. Johnson: Civilianization to a degree is inevitable, but there are certain areas where no matter what you do you are not going to get satisfactory performance from a civilian. One area I can think of where this has been tried in a number of forces is the identification branches. You have to have continuity of evidence and you have to have the expertise that probably is only available to an experienced police officer, one who has been in the field and who knows what's required. I can't see that civilians will function properly totally as identification officers. Now, they can function as support staff in that particular branch, doing some of the jobs that do not require the individual to give evidence and receive the designation of an expert.

We also get numerous complaints with regard to communications branch people that they take calls and give calls with no idea what goes on on the road, having had no experience in that regard.

What concerns me about civilianization is that it's done on the basis of economics. But it almost seems in every instance when you are taking away positions on a force that could be available to senior service police officers then you should be looking at the possibility of providing an adequate pension. In other words, we should be looking at pensions that provide, as the military does, pensions for 15, 20, 25, 30 and 35 years of service, 35 being maximum service.

We have young people starting on the job now who, when they reach age 60, could have 42 years of service. I believe they should have options open to them so that if something happens during that service they may want to retire, they may want to move into another segment of the force. Many people have said that once an officer reaches 50 years of age he shouldn't be out on regular patrol; he shouldn't be mixing it up with the young bucks, if you want to call them that. It's easy to say that, but there are no provisions to do otherwise.

What is happening in the interests of economy is that we do away with every job where you could take an officer who has that experience and who could lend something to the force by reason of that experience, and those jobs are all being taken over and done by civilians. There is no mechanism now other than, I suppose, to throw oneself on the mercy of a police commission.



If an officer has some problem, whether it was incurred on the job by way of an injury, whether he contracted some disease in the course of his duties or whether it was just some unfortunate situation where he contacted some criminal or some serious disease that incapacitated him, there is no provision for him to move laterally unless it's at the whim of the commission or on the recommendation of the chief.

I think there should be some provision, some mechanism, that allows or provides a proper pension rather than have the man go on to welfare. Lord knows, I don't think we need too many more situations to develop that provide that for any citizen.

In any event, that's the concern we have. We believe civilianization is one thing, and we see that it will come to certain degrees. But you are not going to replace the actual police officer with civilians. It can't happen. I don't care how badly the economic situation develops.

I have heard the comment that the taxpayer won't stand for this; he won't stand for that. Frankly, I wouldn't mind having to deal with the taxpayer on the basis that I am dealing with you here now, because for the most part I find the rank-and-file taxpayer is very supportive of the police. He wants the police out there; he's the one who complains that he wants to see them on the beat. But he does not understand the work load that is being forced on the people. There's no way they have time to get out of the car even though they are radio-equipped and can walk; they are going to be called back because mobility is the name of the game these days. Probably nobody is more mobile or more flexible when it comes to crime than the criminal himself. That's one of the prices the police officer has to pay.

From my experience, I think police officers would like nothing better than to be on the street, to have that personal contact with the citizens they are sworn to serve; but it's just impossible under the circumstances. The only way you can do that is to provide more manpower, and we know economically that can't be done. So someone has to suffer or some facet of the service has to suffer, and I suppose it's the public contact that does.

We are urging that more emphasis be placed on the officer's role with the public, his attitude, his approach. The media do us a lot of harm with the Starsky and Hutch type of attitude that our young people are very susceptible to. I hope that, whatever system of education is entered into, a large amount of emphasis will be placed on the image of a police officer, how he should respond to the public and how he should speak to them.

I suppose the easiest way of summing it up is to say that police officers should want to treat the public the way they would like to be treated themselves.

Mr. Breaugh: I have one final area that I would appreciate your comments on. It's a little dicey to explain this, but many times a police officer is sent into a situation with a second set of expectations. I will give you a couple of examples.



In a number of labour disputes, police officers are put on a picket line. Most of the ones I have talked to are a little uncomfortable about that, not quite sure of their role there. On other occasions, usually a large police officer is sent out into a street situation. He knows that the reason he is sent there is that he is physically large, impressive and imposing; he knows that the reason he drew that duty is probably that he will do something that--I guess you can't put it any other way--isn't quite legal.

In other words, whoever sends him out there--a sergeant or whatever--sends this big guy out on the street and he knows that he is not going to lay charges; he knows he is not going to do an investigation. He is there to impress, physically, a group of kids on the street.

12:50 p.m.

The officer has to go. After a while, if he has drawn that duty a couple of times, he knows why he's there. If he is overactive with the juvenile on the street or a picketer on the picket line, that officer is going to be the source of some allegations about his conduct. He knows he can't violate either the letter or the spirit of the law. That's a pretty susceptible individual. He knows in one sense that he's being asked to do something that is not really normally part of a police officer's experience. If he goes a little too far over the line, uses a little too much force in doing something, he may well find himself in front of the police commission for using excess force.

How does your association feel about getting put in that kind of position?

Mr. Johnson: I think the type of position you have outlined to me is something the police officer recognizes, and that's part of his duty. It's something you have to accept and deal with. I'm not so sure I concur with your views that he's being sent out there to break the law, because my own view is that a police officer who has the right qualifications and expertise is going to refuse to do that. Certainly there is--

Mr. Breaugh: Excuse me; let me stop you there. Does he have the right to refuse?

Mr. Johnson: Yes, sir, because then his refusal would be on the basis of whether he was given a lawful order. The only way he could refuse to do it would be if there were some question as to whether it was a lawful or unlawful order.

I'm not naïve enough to believe that there aren't police administrators or police officers who wouldn't be sent out and given certain instructions that would actually be breaking the law. That's unfortunate, and those cases have to be dealt with as we find them, and dealt with on their merits as we understand them. I hope they are not too frequent, but I'm not naïve enough to believe that they do not happen.

I would say that's when the police service in general has to

be strong and resolute in what its principles are going to be and how it is going to deal with the people--the bad apples, so to speak, both at the administrative level of the force and at the rank-and-file level of the force--because we are certainly not proud of that type of individual.

Mr. McLean: Mr. Chairman, I want to compliment Mr. Johnson on his presentation. It has been excellent. I think Mr. Johnson probably would make a good politician, but I don't think he would want to take the reduction in salary to do that.

Mr. Breaugh: You're about to get into a ruckus.

Mr. Johnson: It's not that I wouldn't mind all those nontaxable benefits I understand you get.

Mr. McLean: I have three questions. The first one concerns the size of the commissions. What size would you recommend as the most feasible, in your estimation?

Mr. Johnson: I don't think that commissions should be composed of any more than five or any fewer than three. I believe that every force, no matter how small or large, should have a police commission. I'm not an advocate of committees of council, and I'm certainly not an advocate of forces being run by councils in general.

I think the history, as we know it in this province if we really had a look at it, shows that we've tried all the avenues of more politically run police forces and forces that are run by appointment, as they are now, on the commission.

I firmly believe, and I have to stand by my convictions on this, that the majority of a police commission must be appointed by the province. Even though it's a political appointment, the majority must be appointed by the province, because you don't have the local political affiliations and therefore you are not finding that your forces are being run on the whim of council as to the best way it might look with regard to how the voting public see them.

In other words, experience dictates--and I have to watch how I word this, because you gentlemen are all politicians--that when you have politically run police forces, corruption seems to raise its ugly head more frequently. So I suppose if the shoe fits, put it on; otherwise, I just leave my words at that particular point.

Mr. McLean: The second question I have then is, once a commission does an investigation, do you feel that it should be mandatory that those recommendations be carried out?

Mr. Johnson: Under the present scope, it cannot be. I believe that is part and parcel of giving more power to the Ontario Police Commission. It may seem strange from an employee representative like myself to say that, but I recognize there has to be some overriding body.



In my experience, in many instances at the administration of force level, there are too many inequities, too many wrongs being done and they have to be corrected. Therefore, I would say, "Yes." If they do an inquiry and they make recommendations, it should be a "shall" instead of a "may."

Mr. McLean: The third question I have then is, when you initially started, you indicated you agreed with several of Mr. Wilson's points. I would like to know the point or two you did not agree with.

Mr. Johnson: I do not agree, and I think I have indicated that, with the appellate situation dealing with discipline being still within the ambit of the Ontario Police Commission. Unless there are some changes, I would say, "No."

I can say that on the civilian complaint aspect of things, maybe that is a position where the Ontario Police Commission should have a body that, although they fall within the scope of the Ontario Police Commission, they are not directly hinged to or affiliated with the inspectorate or advisory branches, and so on.

It is very hard to do under the present scope because, obviously, the chairman and his colleagues work directly out of the same building and the same offices and so on where there is an inspectorate staff. I am not saying that necessarily has to change, but I do think, from strictly a perception point of view, you cannot continue to have the Ontario Police Commission involved in appellate duties.

I am hopeful that this may change or, if they are to continue in that area, there may have to be changes in the other area. Maybe the inspectorate branch will have to be something separate and apart. I do not have all the answers. I wish I did. I am just saying that the system as we now have it is behind the times and it must be changed. That is what we are striving to do.

I wish I had the answers and could tell you in every instance what we recommend, but I do think that in many instances, as I have seen it, not only in federal law but also in provincial law, there is too much taken from a large force such as Metro's. Everything that happens in Metro does not happen on other forces. We certainly do not have the racial problems and so on on other forces which we see manifesting themselves here.

Dealing with Metropolitan Toronto--and I have to say at this point that I think the government took the right position when they enacted a civilian complaints procedure in Metro--it may be the forerunner of similar types of systems in other large and small communities, but it may also be that will still be unique to Metro, and they will have to set up, through the Ontario Police Commission, a tribunal that will look after the civilian complaints from other areas.

Mr. Chairman: I agree with your initial remarks that there was some problem as to credibility in the OPC. A lot of that was because the OPC was not getting the support from the government and from the ministry that it should have had in earlier years. The reason for setting it up in the first place was born out of controversy and they did not really advance beyond that.

What you are saying in substance is that it should be enlarged; it should be given more power and it should be given more duties. The committee's knowing that the rank-and-file officers feel that way is of some help to us.

1 p.m.

Mr. Johnson: One thing, Mr. Chairman: In talking about enlarging the commission, I hope I made myself clear. I believe the Ontario Police Commission itself, which is now represented by three, should be opened up to be representative of the police community.

In other words, I believe there should be a representative from the police association, the chiefs' association and from the governing authority, besides the people you have appointed. How that is done, with a full-time chairman and perhaps two sidesmen and the other people being appointed on a part-time basis, I am not so sure and I am not so sure I want to comment on that. But that is my particular view, and I am glad that you see there is some depth to what I had to say.

Mr. Chairman: Thank you very much, Mr. Johnson. I appreciate your appearing here this morning.

Gentlemen, we will adjourn for lunch. Our timetable indicated that we would be back at 1:30 p.m. to hear Messrs. Sewell and Sheppard. I think we could be back at 1:45 p.m.

The committee recessed at 1:02 p.m.

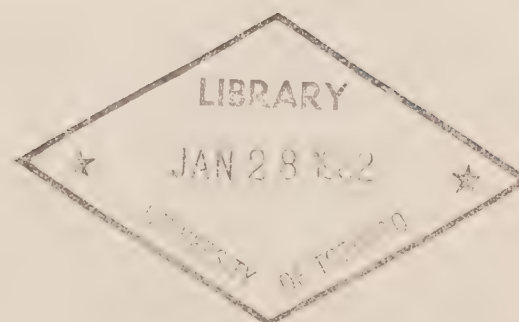


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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCIES, BOARDS AND COMMISSIONS HEARINGS

TUESDAY, JANUARY 12, 1982  
Afternoon sitting



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)

VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)

Breaugh, M. J. (Oshawa NDP)

Charlton, B. A. (Hamilton Mountain NDP)

Edighoffer, H. A. (Perth L)

Epp, H. A. (Waterloo North L)

Hodgson, W. (York North PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Robinson, A. M. (Scarborough-Ellesmere PC)

Taylor, G. W. (Simcoe Centre PC)

Watson, A. N. (Chatham-Kent PC)

Also taking Part:

Kolyn, A. (Lakeshore PC)

Clerk: Forsyth, S.

Assistant to the Clerk: Carrozza, F.

Research Officer: Eichmanis, J.

Witnesses:

MacGrath, S., Chairman, Ontario Police Commission

Raike, S. W., Chief, Inspectorate Branch, Ontario Police Commission

Sewell, J., Alderman, Ward 6



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Tuesday, January 12, 1982

The committee resumed at 1:53 p.m. in room No. 228.

AGENCY REVIEW: ONTARIO POLICE COMMISSION  
(concluded)

Mr. Chairman: I see a quorum. This afternoon we have John Sewell, alderman for ward six of the city of Toronto, who with Alderman Sheppard has written a letter regarding police commissions and the Metropolitan Board of Commissioners of Police. We have been gracious enough to fit you in this afternoon on such short notice. Would you like to come forward to the hot seat and read your letter? That would be helpful.

Alderman Sewell: I am really pleased that you could fit me in. Alderman Sheppard is in another part of the world at the moment where, I am sure, it is raining; at least I hope it is.

Mr. Rotenberg: He is one of those rich Socialists.

Alderman Sewell: He and I drafted a letter. We thought it was a nice opportunity to talk about the role that the commission was playing and what it might do. I have become aware of some of its activities because of a course that I am teaching at York University, entitled Police in Urban Canada. I have had some dealings with the commission and found them most helpful. I have had a look at some of their publications and some of the data that they have been able to put together.

It seems to me that they are playing a most useful role in regard to policing in Canada, particularly in Ontario. I was hoping that this committee might ask them to expand their role, keeping well within their jurisdiction, but beginning to take a stronger role in respect to local commissions.

I have suggested that there are two basic areas where the commission could help local commissions. One of them is in regard to procedures. In Toronto there have been various debates on how the board of commissioners of police should deal with its business. My feeling is that the Ontario Police Commission could help to define what it expects from local commissions in respect to such matters as the openness of meetings in order to guarantee that business is done in public.

Policing, after all, is probably the most important government service that is provided. It is the most contentious as well. For that reason, it is extremely important that as much business as possible be done in public. I happen to think that police business, like most other government services, can be totally done in public. Outside of personnel negotiations and real estate matters, most other police matters can be talked about publicly. I believe they should be. In any case, the OPC could give some good guidance to local commissions as to what is expected in terms of the openness of meetings.

Secondly in regard to procedures, I think the OPC could provide some extremely useful advice about how local residents can be involved in policing matters. One of the great disappointments I have noticed in my years in public life is that the public rarely gets involved in a discussion about policing matters. Occasionally they talk about police brutality, police deviance, but they do not talk about the bread-and-butter police issues. If the OPC specified that opportunities should be made available for local residents to present their views, that would really help. Maybe we would find that commissions would go out of their way in doing that.

The third point is the extent to which local authorities encourage public debate. I always find it interesting to look at other police commissions. In Calgary the police commission takes the view that it is responsible for leading public debate about policing issues. Therefore, for instance, in the last year or two, when the Calgary community has faced problems in regard to prostitution, it was the Calgary police commission that started the debate and went around holding public hearings about what should be done about that problem. If the police commission does not play that role in provoking public debate, I do not know who does. It seems to me that the OPC could provide some pretty good advice to local authorities as to how it could encourage public debate about policing issues.

The other area in which I think the OPC can be most helpful is in regard to substantive matters. I have suggested three particular problems. There are a number of others I could talk about, but I will stick to these three for a moment. The OPC should be setting down a target for the percentage of the annual budget that is spent on research and planning functions. Most of us recognize that when you are dealing with any large organization, unless you have a strong research and planning function right in that organization, you will be put in the position where you will be wasting your manpower. You will not be looking at the problems in exactly the way you should.

If we set down some targets, we could probably begin to reinforce the planning and research function to ensure that police commissions were getting maximum value out of the money they spend. I note that the amount of money spent in Metro Toronto on planning and research is very small. It is about \$600,000 out of a budget of \$235 million. Most people I talked to think that it should be much increased. Perhaps we should be in the position of saying two or three per cent of the budget should be in research and planning.

Secondly, the OPC could be very helpful in beginning to outline some guidelines for the exercise of police discretion. We all recognize that the police exercise their discretion every day in going about their job. One indication of that is laws that they do not enforce, or if they did enforce them, we would be very angry or they would be acting unwisely. In fact, we expect police to exercise their discretion all the time. We would never expect them to enforce every law all the time.

The best example I could give would be a rock concert where, if the police made a decision to arrest somebody for smoking marijuana, they would probably be making the most foolish move that one could ever imagine. The police officers would be put in



physical danger and mayhem would break out. We expect the police in that situation to maintain order, as opposed to enforcing the law, and that is an exercise in police discretion. We know the police exercise their discretion in regard to speeding laws, and I think we are all glad they do. I could go on and on.

2 p.m.

What we do not have in Ontario in any local forces are some guidelines as to when and how it is that they exercise police discretion. Usually what we say to the police is "Figure it out yourself," or we ask the police to learn it on the job and pick it up from other people. When is it that you let young offenders go rather than charging them? When do you give them a warning and when do you charge them.

I think it is a very difficult area. It is probably an area of debate that not too many local commissions wish to get into on their own, but if the Ontario Police Commission could provide some guidance, I think we would probably find significant improvement in the way in which police exercise their discretion. I would hope that you might suggest to the OPC that that is an area it should be looking into.

Lastly, I think the OPC can play a really valuable role in beginning to flesh out what the objectives of policing really are. It is a very difficult area, one that is fraught with contradictions of what it is we want the police to do. Unfortunately, difficult problems like that do not get any easier to deal with by disregarding them. The sooner we begin to write down the types of objectives we expect our police forces to pursue, the better off we are going to be. The OPC is the body to start that debate.

Let me give you an example of what I mean. There is a prostitution problem in Toronto on Isabella Street. I think most people are aware of that. Isabella and Church is a serious area for prostitution. Residents in the area don't like it. They have complained to the police that the police should take some action in order to deal with the problem. What do the police do? The police say, "We will deal with the problem," and they set up decoys, both men and women, to catch prostitutes who are soliciting or men who are after prostitutes. Because they set up those decoys, they have managed to get a number of arrests on Isabella. So the objective for the police was to get a number of arrests in order to stop the problem.

Residents saw it a bit differently. They thought the easy way of dealing with it was not to worry about arrests but to have a cop on the beat so that there was a person in uniform walking up and down. They felt the way to deal with the prostitution problem on Isabella was not to make arrests at all but to have a physical presence. There you have two different objectives for trying to pursue a problem.

Mr. Chairman: It might move them down to Gloucester.

Alderman Sewell: The answer to that one is that probably most people in the world would not have a problem with prostitution if it was spread out.

Mr. Watson: Do you live on Gloucester?

Mr. Chairman: No, Isabella.

Mr. Watson: I knew you lived over there somewhere.

Alderman Sewell: The point is that there are different objectives. I guess the other way of putting it is that we always say to the police, "Enforce the law and maintain order." Those two ideas are fundamentally opposed to each other. You maintain order by keeping everybody in line. You usually enforce the law by protecting people's rights even if they are not part of some system of order. So those two objectives conflict and yet they are the ones we always tell the police to pursue.

I think if the OPC began to flesh out police objectives and ask local authorities to begin to talk about them, that would be a most helpful exercise for everyone. We would find that communities would start talking about it as well and it would ensure that we would get much closer to having policing that people are happier with.

The substantive items become most important in the 1980s because of the financial problems. It seems to me that if we are going to face those financial problems in a realistic way, we have to be clear about how we want money spent. It is only by talking about research and planning, guidelines for police discretion and objectives that we are actually going to figure out what our police forces are all about and how we want them to operate. It is on those two points that the OPC can really help local authorities.

I would very much like the committee to urge the Ontario Police Commission to pursue objectives such as that. They could get into other substantive matters such as productivity and patrolling--there are various systems of patrol that work and do not work--crime prevention and so forth, but let me just leave it at those three points.

Mr. Chairman: I have just a short question, Mr. Sewell, dealing with section (b) on page 2. Are you suggesting that a police officer should have a codified set of guidelines? As you know, a police officer reacts as a result of his education, training, experience and a certain amount of intuition which, I am sure, he learns from being on the beat and being a member of the force. I do not know how one could put in writing how to exercise discretion. For example, I see your point about a rock concert, but I can also see problems if the people who attend those concerts know that the police officer has been directed as a result of some set of guidelines not to enforce the law there, as he normally would if it was a smaller crowd. That might have some effect on the conduct of that crowd and the use of drugs.



I do not know how you could inhibit the police officer's discretion. One of the advantages a police officer has who has served in small towns, where there may be a four-or five-man force and where sometimes he is alone on a Saturday night with a bunch of kids on Main Street, is that there is no question that discretion is very important. Sometimes a good sense of humour is something that will solve the problem more than overreacting. I would appreciate any comments you have on that.

Alderman Sewell: I think we all recognize as a starting point that police do exercise their discretion. The question that one has to grapple with is how do you come to a decision as to what it is you are supposed to do. Do you come to that decision simply on your intuition, to use your word, Mr. Chairman, or do you do it on the basis of having some idea of what is expected of you and having some clear guidelines about the type of objectives that you are trying to reach in the business of policing?

My feeling is that as much as possible you want the latter. You want policemen to be able to rely as much as they can on clear ideas of the objectives they want to reach. I believe you can write those down. I believe when you write them down you begin to realize how difficult they are, but I think that is an exercise one has to pursue. I think the public recognizes that.

I think most kids who go to rock concerts recognize that the chances of their ever getting caught smoking dope at a rock concert are very small as long as they are not rowdy. That is why they all do it. It seems to me that if it is clear that is what is expected in the situation, we should be writing it down and saying, "Here is the way we approach rock concerts."

In other words, we should not be duplicitous in respect to the public. We should make it clear for them and say, "Here are the rules. Here is the way we are doing things." I think one of the great problems with policing is where there are some laws saying one thing and some police doing something entirely different. People are saying, "Wait a minute. This does not make any sense. What is the law and why aren't we enforcing it?" I think the example of drugs at a rock concert is a perfect example of where there really is a strange situation where you have a law and you know nobody is going to enforce it.

The police, among all people, have to be clear about that. They are saying, "This is our policy. We know that is the law, but our policy is we do not enforce that law. If counsel or the Legislature wants to give us an instruction to enforce the law, fine, we will do it." At the moment, we are in this duplicitous world where we are sort of kidding ourselves and we are saying that because we do not write it down, therefore it is all right. I happen to think that policing is much too difficult to sort of say, "Well, you can't afford to write it down." I think you have to write it down.

Let me give you two other problems. One problem is the question of equity. If you do not write down rules about how you are going to enforce discretion, then people are not going to be treated equally by the same police force. One cop does one thing

and another does another, and both are justifiable because they say, "Oh, I just exercise my discretion. I have a different view of the world from that other cop."

2:10 p.m.

Mr. Chairman: Yes, but at the same time he is enforcing the law, is he not?

Alderman Sewell: No. If you go to a rock concert and you do not arrest anybody for drugs, you are not enforcing the law. We do not want the police to enforce the law most of the time. Most of the time what we want the police to do is to keep order. We do not want them to enforce laws. Forget about that. That is true; in terms of normal behaviour, that is the situation. In fact, where the discretion really hurts us, where we get angry, is when we are driving along and, like everybody else, we are speeding and the police pull us over. We say, "Now why do you enforce your discretion against me?" That is what always happens.

Now if, in fact, one can sort of write down some rules about how you are going to--

Mr. Chairman: Do you think that is a legitimate complaint?

Alderman Sewell: Yes, sure it is, unless there is a law that says, "We want the police to randomly stop people who are speeding, but not stop everyone." I can understand that, but I think the public has a valid complaint in saying: "Wait a minute now. There were 10 people speeding in that road. I got caught and I don't understand why. You are enforcing the law against me, but not against all those other people, and that's not fair." I think that is a good and valid complaint that people have. That is why it is important to start writing down how it is that you deal with questions of discretion.

The last point I would make is that the most important discretionary decisions that have to be made by police have to do with the powers of arrest. Let me just give you a little hint of what happens. Right now, more people are put in jail by the police than are put in jail by the courts. Your chance of being arrested and actually incarcerated by the police are much greater, something like--I do not know--30 per cent greater in terms of the police than in terms of the courts, which is quite interesting. That is an exercise of police discretion, where they say, "Well, we are going to arrest you, and even though we are presuming you are innocent, you are going to be in jail," as opposed to the judge, who has found somebody guilty and then decides to incarcerate or not.

It seems to me that it would be important to start writing all that down because that is important to a lot of people. It is certainly important to young kids; we know that. Unless we start being serious and writing down the rules about how we want our police to approach that, I think we are going to be missing a lot in assuming that the police always enforce the law, and we know that is not true and we would never want it that way either.



Mr. Chairman: Are there any questions from the members of the committee?

Mr. Breaugh: Is it legitimate to expect this particular agency to take on all of these roles?

Alderman Sewell: I think it is. The Ontario Police Commission does help out local authorities right now. They have published a booklet in respect to what members of police commissions are expected to do and how they are expected to behave, which is an useful publication. It is not a publication that I agree with 100 per cent, but I found it to be an useful document to have in print.

I think it would be quite easy to say, "Oh, now that we have told you what it is that we expect of people as individuals on the commission, here is what we expect of commissions." I think that is a very useful thing. It flows directly out of what they have been talking about.

In regard to something like productivity, and I guess the closest thing I have talked about with regard to productivity is planning and research functions, OPC staff now advise local commissions on productivity and say: "Wait a minute now. You have a police force that relies on every officer dealing with three complaints a shift. We have other police forces in Ontario where they have officers who deal with eight calls a shift. How come there is a difference?" In fact, I know that the staff now talk about those types of things with the local commissions. So suggesting that local commissions should be setting aside some money for planning and research falls directly within what the OPC has been doing for the last few years.

Mr. Breaugh: Okay, but there is no representative of the police association or the police chiefs currently part and parcel of the Ontario Police Commission.

Alderman Sewell: Yes.

Mr. Breaugh: Before we set them off on this kind of task, the kinds of things that you have laid out here, wouldn't we first and foremost want to ensure that when they make their decisions--right now, of course, the police association could go to a public hearing held by the OPC and say whatever they want to say, I suppose, but there is considerable difference between having that opportunity and the opportunity to actually sit down and write recommendations, forward on reports and whatever. Shouldn't we be considering altering the makeup of the police commission itself before we send it off to do this kind of task?

In other words, wouldn't we want to broaden it, to have the chiefs association and the police association there. It would be a bit better representation of the mythical way in which these agencies get their people, as has been discussed by this committee a good deal. We are never quite sure exactly how you get on these things, but shouldn't we open that up too so that by the time they do sit down to take on these tasks, we are fairly well satisfied that is a representative group which is doing that particular piece of work?

Alderman Sewell: I didn't come prepared to talk about the extent to which the Ontario Police Commission represented the public. I don't think that by putting on police chiefs or police associations, you're going to get representation of the public. In fact, what you want out of a commission is a body that can take a look at the state of the world and figure out how it should relate to the subject at hand.

Certainly the staff and the commission itself, I think, are capable of performing all these tasks, not in a way that I would be totally delighted with, but the point is that somebody has to begin the debate and they are the best body to begin it in a realistic way. I know that some of their moves in respect to productivity, budgeting and so forth have not been met with a great deal of favour by local forces. They have been saying, "Wait a minute, get out of here, leave us alone."

I think that is useful and I am not expecting that everything they would say about police discretion or police objectives would be things I would agree with, but they could easily start the debate. I would prefer to start the debate sooner rather than later. The budget crunch is coming in regard to policing, and the sooner we start thrashing out these problems the better handle we are going to have on how we should be spending our money.

Mr. Chairman: Any other questions?

Thank you very, Mr. Sewell, for attending this afternoon. I appreciate your remarks.

Next is the chairman of the Ontario Police Commission, Mr. MacGrath. Would you like to come forward?

Mr. MacGrath: Mr. Chairman, with your permission, may I have Mr. Raika accompany me? He is part of our organization.

Mr. Chairman: Oh, yes.

Mr. MacGrath: Mr. Chairman, may I have your permission to make a very brief statement? I know I am going to be asked questions, in particular with respect with points raised here this morning concerning training and complaints procedures, but I do have a very short opening statement.

Since its establishment in 1962, the purpose of the OPC has remained unchanged: "To increase the level of police efficiency and police integrity in the province." We have heard much this morning about reorganization from the various representatives of the three levels of policing. I hearken back to the 1970s when there were a number of major developments in policing. Ontario established the Ministry of the Solicitor General to provide special ministerial attention to the problems of policing and public safety. One of the first acts of that new ministry was to set up a task force to study policing needs for the next decade.

Since then public and media protests have evoked a number of reports or inquiries, such as those by Maloney, Morand, Marin, Pitman, Krever, Carter, Clement, Gerstein, Greenwood and McDonald.



The final sentence in my opening statement is that those of us who make up the police commission envisage this province policed by a system of viable, efficient and adequate municipal forces which, with a deployed Ontario Province Police force, will provide a network of protection and police services to the people of the province, all linked together by intercommunications, co-operation and co-ordination of effort. That is my opening statement, Mr. Chairman.

2:20 p.m.

Mr. Chairman: You have heard Mr. MacGrath, members of the committee. They are formulating in their minds some questions to ask you on some of the comments regarding the function of the Ontario Police Commission, enlarging on what you have said, particularly with respect to the complaints bureau, the appellate function of the commission, the operation of the college and things of that nature. Do you have any particular comment you would like to make about some of those?

Mr. MacGrath: I don't know if you mentioned training or not. There isn't a regulation in existence compelling all chiefs of police or all police forces to send their recruits to Aylmer, to the Ontario Police College. However, 99 per cent of the recruits in the province are trained at Aylmer for a 16-week period. In excess of 32 different courses are taught at Aylmer. Last year we had in excess of 3,000 students at Aylmer. I am going from memory now, but 1,300 of those were recruits. The balance were senior police officers from all forces in the province, including the OPP, ranging from sergeant upwards.

Last October we imparted and conducted the first three-week senior command course aimed at developing future chiefs and deputy chiefs. This year, hopefully, we will conduct two, if not three, senior command courses in the province. These were all recommendations contained in the task force on policing. In addition to training police personnel, we also train all law enforcement personnel from 13 other ministries in the provincial government.

Turning to complaints, there is a complaint system in existence which was created in 1978 through the association of chiefs of police in conjunction with the municipal governing authorities, the police association and the Ontario Police Commission. It has worked very well except in Metropolitan Toronto. But the makeup, the framework of Metropolitan Toronto is so different from elsewhere.

The Ontario Police Commission can only enter into a complaint procedure once the complainant has gone through two different phases. He or she has to go to the chief of police and lodge a complaint. If the complainant is dissatisfied, he or she can go back to the local board or the local committee of council. Then, if he is still dissatisfied, he can come to us and we will lodge an investigation.

I have some complaints figures here, if I may be permitted to recite them. From January 1 to June 30, 1981, there were a total of 1,392 complaints lodged against all 128 forces in the province. I

am including the OPP in that number. Of these complaints, 428 were with respect to excessive use of force; 67 were for alleged harassment; 573 for improper conduct; 219 inadequate service; and 105 were tagged as miscellaneous. These complaints were disposed of as follows: resolved, that is, settled by discussion or explanation by the officer of the procedure involved, 676; unfounded, and I quote, "proven not to have occurred," 700.

There were 278 of these alleged infractions where the officer involved was exonerated. The complaint appeared legitimate but the officer involved was justified in the actions he took. And 373 of these complaints were not sustained. That means that evidence to either prove or disprove allegation was not available. Investigation of 333 complaints is still pending.

Mr. Rotenberg: What was the number of complaints where the complainants were found to be justified? You did not seem to give that number. There was the number resolved, but what is the number where the investigation proceeded and where the complainant was justified?

Mr. MacGrath: Out of 1,392 complaints, 117 were sustained, and that includes all forces in the province.

What was the third point you raised, Mr. Chairman?

Mr. Chairman: Still dealing with complaints, those would be complaints that went in the first instance to the local force?

Mr. MacGrath: To the local force, then to the local police governing authority and then to us.

Mr. Chairman: It is all very well to say that is the procedure, but most people who have complaints really don't know that procedure exists. There are situations where there are complaints made, for example, to members of the Legislature. That is usually turned over to the Attorney General or Solicitor General who, hopefully, in turn would pass that over to the OPC. I suppose under the present procedure, you would then turn it back to the local force.

I am wondering are you seized of a complaint right from the start? Does the local chief advise you there are certain complaints before him at a particular time, or do you first hear about it when it is through the first two stages?

Mr. MacGrath: We will only hear about it when the complainant is dissatisfied with the action taken locally. I have an addendum to make. In the first six months of this year, we became involved in approximately 10 per cent of the unresolved complaints. So there is not a spate of complaints coming in from across the province.

Mr. Rotenberg: Is that 10 per cent of 1,300 or 10 per cent of what?

Mr. MacGrath: Ten per cent of 170.



Mr. Rotenberg: In other words, of the 1,300 complaints that start out at the local police station, you only got 17 of them at the Ontario Police Commission?

Mr. MacGrath: No, 117 not sustained. On 17 we had investigations.

Mr. Rotenberg: In other words, of the 1,300 complaints that started at the local police station, only 17 got to the Ontario Police Commission?

Mr. MacGrath: That is right.

Mr. Chairman: Was there a situation where the decision of the OPC overruled or was different from the local decision?

Mr. MacGrath: No, we haven't come across that in the three years we have been operating the complaints system. There are three pending that have not been disposed of.

Mr. Chairman: Any other questions?

Mr. Breaugh: I have a couple. It has been suggested a number of times today and by others in other places that the police commission changes gears, takes on different roles, takes on a different shape and form. Part of that is the new act itself and part of it is suggestions from other people that you attempt much more to lead in a public way discussions about policing, about criminal law and about the judicial system. How would you feel about trying to carry out something like that?

Mr. MacGrath: Are you referring in particular to the appellate function?

Mr. Breaugh: No, on a slightly broader scale. For example, a number of people, police officers, have complained about the bail system. It strikes me that someone needs to put all the players in the same room at the same time and sort out: "Is it wrong now? Are there changes which should be made? What should those changes be?"

It strikes me that from different sources in our society we hear different voices. If you talk to lawyers about that particular problem, they will give you one version. If you talk to police officers, they will give you another insight into it. Nowhere is there the real opportunity to have all of those active players in the system sit down and try to resolve it.

How would you feel about being that mediator, or playing that role?

2:30 p.m.

Mr. MacGrath: It would be a really gargantuan role. I think we have made a start, or the Solicitor General has made a start, with these proposed revisions to the Police Act. There have been three meetings held already with representatives of the

Ontario Association of Chiefs of Police, the governing authorities, the police association and ourselves with respect to the revisions contemplated in the Police Act.

If I am reading you correctly on these in which bail is granted, or some of our correctional institutions being regarded as a revolving door, the associations that I have mentioned, namely, the chiefs, the governing authorities and the police association, do a pretty good job of lobbying with the authorities in so far as amendments to the code and provincial laws are concerned.

Mr. Breaugh: That is my problem. I am unhappy with the current system whereby someone goes off and writes a big report about some particular item and the report is published. I never get to see what happens between that point and the next time I see Roy McMurtry standing up with some great new law he is proposing.

As a member of the Legislature, I would like to be able to at least find out where these things happen and how they happen. I think the public has a bit of a right to know just exactly how this thing works, too, and they don't now. They don't get a chance to sit in on those meetings. They do not have an opportunity to see the pros and cons and to make an informed judgement about whether the legislation which comes out the other end of this process is good or bad. I am suggesting that perhaps something like the police commission would be a suitable body to carry out that role.

Mr. MacGrath: Off the top of my head it would mean a terrific increase in our staff and our budgets. I see what you are driving at but we are not equipped at the moment to undertake a chore like that.

Mr. Breaugh: Okay, how about a simpler chore then? How about agreeing with the report on firearms? What is going to happen with that one?

Mr. MacGrath: I was listening with interest this morning to the comments made, and I do have some strong ideas myself about regionalized training or refresher training. We are endeavouring to send personnel from the college out to the outlying districts. We realize in these days of restraint and constraint that everyone can not come to the college to undergo courses, but the emission controls in force with respect to some of the local firing ranges have necessitated some of them being closed down.

We tried to send some personnel from the college out to impart some of the new amendments to the Mental Health Act. We have sent, I think, four teams out in the last two years. Again we are constrained by the dollar as to what we can do.

Mr. Breaugh: Are you fairly happy with the way things are now, where a major report is written and then 18 months or two years later legislation is produced? The rest of us don't get a chance to see what goes on in the interim, and I am obviously not happy. For example, whether it is what kind of firearms will a police officer carry, or will they or won't they wear protective vests or whatever the issue might be, I think it is important that legislators have an opportunity to see and hear the debate which proceeds and to make judgements.



At the other end of the system, I am not happy with the idea that somebody stands up and says, "We have discussed this with chiefs of police and they think this is all right." That is not good enough for me. I would like to hear the arguments as well, because I know that very often--for example, in the minister's office--there will be some pretty tough stands taken on both sides of an issue. At the end they come out with a position on firearms, vests or whatever. I would like to hear the arguments that went on in there. I am not happy that that is kept very quiet and in house and the public does not get a chance to see that.

Mr. MacGrath: You are referring to the Greenwood report on firearms, sir?

Mr. Breaugh: As an example.

Mr. MacGrath: Just as of the end of November we circulated all the forces in the province to ascertain which of those forces were interested in testing the more secure, or what is known as "the open holster." Right now the act stipulates that there be a flap over the holster.

So far we have heard from 42 forces out of 127; 32 requested permission to conduct their own tests and 10 of the 42 rejected it. They did not want any part of the open holster at all. We have had to send a reminder out to the 60-odd forces we have not heard from. The next step would be for us to assemble a committee of our representatives of the chiefs, the governing authorities and the police association with some experts to monitor the tests to be done on the open holster. Such tests include how good are these holsters in cars; are they impeding the police officer when he gets in the car; what will be the reaction of the public to seeing an open holster on the police officer on the main street? That is all going to take some time, sir.

Mr. Breaugh: Okay, but my problem is not that. My problem is that I would like the public and myself, as a representative of the Legislature, to see what it is they have to say. For example, I read in that particular report, and I forget who it was who appeared before the judge, about somebody who appeared who seemed to me to have some expertise in the field of firearms. Certainly his language and the brief I read seemed to me to be coherent. It had words in it I did not understand, which always impresses me. He had hung around cops and robbers for a long period of time, which also impresses me, and he offered an opinion that the open holster was safer. It seemed to me that he had some credibility going in and he had a good coherent argument and at the end he came to a conclusion. I did not have a chance to check out his credentials because they were not listed. I don't know the guy and I did not have a chance to see him or talk to him or listen to the other side of the argument.

The judge says that is maybe an idea whose time has come and maybe we should do it. The moment he does that and that big report is written, and it is impressive-looking, that concept has more credibility than it had, say, a year ago. Now you will have police associations and police chiefs sitting down and discussing this and going through technical studies about it, which is fine. That is

great stuff. All I want is access to what you are doing. I would like the opportunity to check out the credentials of those who gave what I guess would be called expert opinions on the matter. I think we have a right to see that and to weigh for ourselves whether is a valid judgement call? Is there a real difference? Would it make a difference to a police office? Can we balance that with the difference that might be there in the public's mind? Can we check out the perceptions? Would the public be offended by police officers with open holsters? Can we have simple access to that information, as I am sure the Solicitor General will have, if and when he ever makes a decision on that?

Mr. MacGrath: Mr. Chairman, may I have permission for my colleague, Mr. Raike, to respond because he was part of Judge Greenwood's task force on that particular study?

Mr. Raike: I am not sure I understand all your questions, but I will try to address myself to them. I think Judge Greenwood did this. There was an announcement published in the paper encouraging anyone to come forward with any kind of ideas. The gentleman you speak of is very knowledgeable in firearms; he is a captain in the armed forces. You are quite right; he knew what he was talking about.

If I understand the basis of your question correctly, it concerns what input the public gets. Surely they get that through the governing authority, where they have an elected representative for their input, apart from the police function. Having published the report, as with all reports it comes to the Ontario Police Commission or specifically to the Solicitor General, and a committee is usually set up representing as many people as should be involved in that. But I say again, the public is represented surely through the elected representatives sitting on our local boards or commissions of police.

Mr. Breaugh: But they did not write that report.

Mr. Raike: But they were involved in the report. The public was invited to participate in the report, as I say, through publication, but you are talking after the fact when the report is published. Again, the governing authorities are involved in a joint sort of recommendation as to what should be done with that report.

Mr. Breaugh: How?

Mr. Raike: There would be meetings. If I can go a little off on the side on that, you ask what format the Ontario Police Commission takes--I'm sorry, I hope I am not speaking out of turn. The Solicitor General invariably sets up a committee to study all problems, whether high-speed chases or whatever. You suggest the Ontario Police Commission should do this. We are also involved on an advisory basis. We have the governing authorities, police association and chiefs of police. So a cross-representation of the police community is in there, and we are often involved on an advisory basis as to the feasibility of those recommendations.

2:40 p.m.



Mr. Breaugh: I am just trying to find some mechanism, whether you are the agency or not, that would open that system up. For example, for an opposition critic like me, it is often difficult when the Solicitor General stands up and say, "The police commission says this, this and this." I don't know whether that is what it said or not. Sometimes I get a chance to see a published document that verifies it, but I really don't know that for sure. I am trying to find some mechanism whereby a legislator, or just a citizen on the street, can get a window on how the process works, more than just the end product where the Solicitor General says, "I have consensus on this."

A good example would be police chases. We have done that in committees here ad nauseam really. It seems to me inevitable that more and more I hear people from the minister's office and others saying, "We really do have to train police officers to drive these vehicles at high speeds and they really ought to be properly equipped." Yet the official position is we don't need to do anything like that. Everything is just fine. Somehow if you are promoting the idea that the officer is well-trained and that his vehicle is well-equipped, you are somehow against police officers if you dare to suggest they maybe ought to know a little bit more about high-speed chases than they currently do.

Mr. Raika: Can I speak on that?

Mr. Breaugh: Sure.

Mr. Raika: You brought up a point this morning I found very intriguing because, rightly or wrongly, the Ontario Police Commission must address itself exclusively to the Police Act. Our mandate is in there and it is rather limited. Your suggestion that we should involve the public certainly isn't provided for in the Police Act. But let me go into the area of providing, I think someone said, guidelines, suggestions, procedures. There is quite a difference between rules and procedures, if you want to go into that later on. I don't want to take issue with Mr. Sewell, but the minute you start writing down how you exercise discretion, you no longer have discretion. It is that simple, from an ex-policeman's point of view.

However, going from that to the logical extension, I am intrigued by the issue of high-speed pursuits because, quite simply, the Criminal Code of Canada gives the policeman the authority to use as much force as is necessary to achieve the purpose, if he has reasonable, probable grounds to believe he needs to use that force. Section 26 now goes on to say he is criminally and civilly liable for any excess of that. So rather than trying to tell the policemen what to do in every individual case, why not control abuses?

I don't want to oversimplify the problem, but having been very much involved in writing regulations, rules are simple. You can write rules and rules may not be deviated from. Procedures are only recommended courses of action that you follow in a given situation having regard to different circumstances. If you start to codify and have one, two, three and you don't come to four, how the heck do you get to five? I have a tendency to oversimplify things,

but you cannot really codify everything for policemen. You must give them that discretion, as was said earlier, but the point is the best way of attacking when he abuses the discretion is to jump on the policeman.

Mr. Breaugh: We have had this argument for a long while. I don't understand why with a problem like police chases the solution always is to write up a set of guidelines. In my view, I cannot say with any honesty that I believe it is the individual officer out there at 11:30 tonight in Mississauga who is going to turn the siren on and chase somebody who is at fault. I don't think it is. It is our responsibility to train that officer and to provide him with proper equipment so that we will minimize the dangers that are involved in that. I don't see why their first effort is to write a set of guidelines, pieces of paper, when I think our first effort ought to be to try to train the personnel involved and provide them with the proper equipment.

Mr. MacGrath: We are doing that, sir. There was considerable discussion this morning about the lack of, say, police driver training at the police college. We have just learned that there is an appropriation of \$162,000, which is what we asked for, to ensure that all recruits from here on in will undergo extensive driver training at the police college. Until now they were just getting classroom instruction, but from here on in the college is built on the site of an old runway down there and there will be actual physical driver training on part of that.

Mr. Chairman: You are going to use poor old Aylmer as a guinea pig?

Mr. MacGrath: We may, sir.

Mr. Chairman: Not on a Saturday night.

Mr. MacGrath: There is another set of guidelines that was brought up this morning also. These guidelines are for the use of all forces with respect to labour disputes. The commission has published a series of guidelines over the years, but I think we published the last set of guidelines in August. They were not published until we had lengthy discussions with the Ontario Federation of Labour and the Canadian Labour Congress. They agreed with us on what we were trying to do. They made some suggestions as to what should go in because there have been instances where police were being accused of being strikebreakers or being on the side of management. We went to the Ontario Federation of Labour first and they agreed to have us to meet with some of their representatives and some of their people from the Canadian Labour Congress. We have published the guidelines for the use of the chiefs across the province.

Mr. Breaugh: It is also my understanding that you have invited some people from the Ontario Federation of Labour to Aylmer to speak to officers there.

Mr. MacGrath: Yes, to talk to officers at the recruit level, the intermediate command and the senior command. We have had some labour lawyers and some well-known labour personalities.



Mr. Breaugh: A couple of people have alluded to a number of areas, and the names escape me again, but in the fall of this year, there was a book published about the discretion of police officers. At any rate, the problem it was dealing with was that in the morning when the officers come into the squad room, somebody obviously has to decide who gets assigned what jobs for the day. It was a simple documentation, purportedly I believe from Peel region force, just documenting how that discretion is exercised. It did cause quite a furore because it attempted, for the first time I am aware of, to document, for example, what an investigation squad will do today, who decides the priorities and how those things are decided. In a sense it is not far off what Mr. Sewell was just discussing with us. It lets people see that, in the first place, there is considerable discretion used in how much of an investigation will occur, how much staff time and resources will be put on a police investigation and, so to speak, when to call off the dogs and proceed with some other investigation.

Have you done much in that line of work, trying to outline how the discretion is exercised, when obviously somebody has to decide where the resources will be deployed on any given day? Have you done much in that area?

Mr. MacGrath: Again with respect to the book you name, Mr. Raiké was deputy chief of Peel region, and with your permission, Mr. Chairman, perhaps he can help me out commenting on that particular book. I have some personal comments on that book, but I would rather not cite them here.

Mr. Breaugh: I should clarify it for the record. To my knowledge, nobody ever really substantiated that it was the Peel regional force and part of the agreement was that it would be a sample force, but not a specific example.

Mr. MacGrath: It was by a university professor, wasn't it?

Mr. Breaugh: Yes.

Mr. Raiké: Without going into the issue of the book, if I understand your question, it deals with deployment of personnel. If you are talking in the guardroom on an individual day, no, you just do not have the time to give your lineup of officers any kind of education on the philosophy on the use of discretion or anything else at that time. All he is given is his assignment.

If I can divert, and I hope I am not intentionally doing that, on your question on whether we do anything on educating police forces on proper deployment, yes, we do. We don't do it on a carte blanche basis; we do it pretty much on a reactive basis, but it is pretty popularly known now that we do this. Many forces call us when they have an issue as to whether they have enough police officers.

Before we go in and even try to determine whether they have sufficient police personnel, we first look to see if they have realistic deployment. You don't just add bodies ad infinitum. You look to see if the ones they have are particularly well deployed. Then we do that. We find out where they are badly deployed. As a

brief example, we will measure their off-duty time, such as annual vacations and everything else. We will look at their peak work loads and we will try to match the peaks. Invariably the peaks don't match. So I am answering your question, yes, we do get into the area of advising on deployment, but to point out a broad guideline saying to 127 police forces, "This is how you are deployed," you can't do it. You have 127 different operations.

Something was said this morning, if you don't mind my digressing and jumping in. I am not knocking Metro. I was 18 years on Metro and I have the greatest respect for it. I think it is one of the best forces on the continent, but the other 126 police forces do not and should not operate the same way as Metro. They can't do it. I think that point was raised this morning.

Mr. Breaugh: The other aspect of that I want to pursue just a bit is deployment. When we visited your headquarters over there, there was some discussion about the use of computers to deploy the forces, so to speak. How sophisticated is that? It strikes me that in many areas policing is at various levels during the course of the day, and I am not sure what the criteria are for doing that. Maybe this goes to some of the work you have done.

2:50 p.m.

Mr. Raike: Demand for service is the basic single criterion. The association would probably take a little difference of opinion and I tend to agree with them to a certain extent. Traditionally, the high period request for service is in the small hours, say, seven o'clock at night to three o'clock in the morning, but traditionally also the association, and I agree with them, fight for the right that the policemen should be given a shot at day relief too.

Almost every contract in the province states there shall be three equal shifts. There are variances of these, of course, where you throw in a fourth shift, the split shifts. Toronto is very successful in this by doing it voluntarily because a lot of policemen say: "I want to work when the action is. I do not need my day relief." But efficient deployment is governed by these working agreements. That is a bit of a problem.

Mr. Breaugh: It is in part. You said traditionally these are the hours when there are the most requirements for service.

Mr. Raike: I should have said historically because it is a fact of life that in most municipalities, depending on the type of criminal activity you are talking about, the biggest preponderance of serious criminal activity is going to take place from seven at night until three in the morning or whatever variances of that.

Mr. Breaugh: And you have done some studies that verify that is still the case or that there are local differences.

Mr. Raike: Every time we look at a deployment we do. We record the calls for service, every call for service.



Mr. MacGrath: When we do a study we do a 28-day period.

Mr. Breaugh: Let me finish with one other area that is of interest to me. I do not quite understand in this regard how you decide that something is worth spending time on. Let us take me as a good example. Your criminal investigations division did an investigation about my walking the picket line in Oshawa or being present at a picket line. Who makes the determination about whether Inspector Wood will carry out that kind of an investigation and is that a time-consuming thing? In other words, is that a high priority, "Never mind the expense, let us conduct this investigation," kind of routine?

Mr. MacGrath: No, it is not a question of never mind the expense. You are referring to Inspector Wood in our bureau?

Mr. Breaugh: Yes.

Mr. MacGrath: He takes directions from the executive of the Criminal Intelligence Service Ontario, which is made up of 28 forces in the province. The executive of that branch is made up of four chiefs of police and the three members of the commission. We meet every month. Who makes the decision? It could be Inspector Wood or Mr. George, who is the director of the bureau.

Mr. Breaugh: Or something like the activities of the Ku Klux Klan where at one point I was told, correctly or otherwise, that we did not have anybody in Ontario who was doing much in the way of monitoring the activities of the Klan but other agencies in the United States were. How do we establish those criteria? Who does it and how do we do it?

Mr. MacGrath: I can assure you there is monitoring of the endeavours of the Ku Klux Klan and it has been going on for some time.

Mr. Breaugh: When we were at your offices there was a good deal of discussion about organized crime and drug trafficking and things like that. Which agency decides that is a priority item and ought to get this amount of our resources?

Mr. Raike: If it is a joint force operation. The joint forces decide. If it is a single--and I think this is probably inherent in your question--individual force operation, that individual force has to decide. It has to be that way because the Ontario Police Commission is charged under the Police Act only for ensuring that every municipality provides an adequate police force. As you well know, adequate is everybody's interpretation. We say that is our role.

If any other municipality wants to provide a little more luxurious police force, we are not about to tell them no unless they ask our opinion. We cannot tell them, "No, you have more than adequate; you have too expensive a police force." We may be faced with that opinion, but we do not perceive it is our responsibility to tell them they are providing excess policing service, whether it is on strikes or anything else.

Mr. MacGrath: Also, we are not a police agency as such. We have no police powers.

Mr. Breaugh: That is the other side I want to get at. You seem to be developing in your offices a new element which I had not been as aware of perhaps as I should, and that is that you are becoming more and more of a co-ordinating agency. These things happen in your office.

I tried to do a little research on that. When was a conscious decision made to have that happen? In other words, there is a whole new role happening in the offices of the Ontario Police Commission, happening very quickly and getting very sophisticated. But I do not ever remember a conscious decision that would happen there.

Mr. MacGrath: I think we had better go back to the accountability of the three of us who are now on the commission, my two part-time colleague members and myself. We are conscious of the great amount of dollars that are spent every year and we have to become accountable to the legislators, the municipal authorities and, last but not least, the taxpayers of the province who are footing the bill for the policing going on in the province.

For instance, until last April, when we visited a force our personnel came back and wrote a report on the adequacy and the efficiency of that force. That report was put in a file in our office. As a result of our study and what was needed and being guided by that word "accountability," now all chiefs of police and the chairpersons of the governing authorities receive a written narrative of what our findings are with respect to the adequacy and efficiency of that force. This helps the chief or the governing authority to improve the adequacy and efficiency of his force.

We cover a multitude of things in our inspection, such as equipment, training, how citizens' complaints are handled, who is being advanced for training, what can be done so far as premises and deployment of cars are concerned. Right at the moment we are endeavouring to launch a study into the use of propane in cars.

Mr. Raikes: If I may, I would like to extend the answer to that because you raised the question this morning, Mr. Breaugh, about whether we were a central agency for making other police forces aware of innovations. On our inspection form, and I will read it verbatim, there is a section there where, "Every officer who goes out and inspects a force must include comments on original ideas, innovative or novel practices or procedures that might be of interest to other forces."

To answer your question, yes, we do perceive and we are doing that job of centralizing innovative ideas, new procedures or anything else. We feel it is our role that if we find something about more than one police force, we make all other police forces aware of it.

Mr. Breaugh: It is just that I have noticed--the last time I had much to do with the police commission was in estimates about three or four years ago--there is a pretty substantive change in the nature of the operations. It is much more aggressive and much more--I do not know quite how to word this--but you are in the active police business much more than you were at one time.



Mr. Raiké: Yes.

Mr. Breaugh: There is quite a substantive shift in there.

Mr. MacGrath: Also, I think we may be looking for more money in our estimates. The more people know about us, the better chance we will have of getting an increase in our budget appropriation.

Mr. Breaugh: That is good public relations. I will leave you alone.

Mr. Epp: While we are speaking about money, one of my concerns has been one that I am sure you are familiar with, and that is the Syd Brown affair. At least a half a million dollars, to the best of my knowledge, of the taxpayers' money has been spent to try to resolve that very uncomfortable situation. How did we get ourselves into that mess?

Mr. MacGrath: That matter is still before the courts. It is not my intention to be evasive, but it is before the courts. Do I have privilege?

Mr. Breaugh: As a matter of fact, you do.

Mr. Chairman: Mr. MacGrath, I think if you explain to Mr. Epp the procedure in a situation like this, involving the local force, the local commission and the OPC and how--

Mr. Epp: And how it works and how we can explain it.

Mr. Chairman: A hearing was conducted and a report brought in and that type of thing.

Mr. Epp: I am familiar with that, Mr. Chairman.

Mr. Chairman: You cannot get into too much more.

Mr. MacGrath: I am the only member of the the commission that sat on the Waterloo inquiry. We made our report and our report had certain recommendations to the local board, the then Waterloo police commissioners. There our function ended. I endorse what was said here this morning by all three representatives from the Ontario Association of Chiefs of Police, the Police Association of Ontario and the governing authorities.

3: p.m.

It is now section 58, and then was section 56, whereby it is stipulated the Ontario Police Commission may recommend. I am not being terse or anything, but as far as the OPC is concerned, the Waterloo incident is now a matter for the local board of police commissioners and it is still before the courts.

Mr. Epp: But the OPC was very much involved. They wrote a report and recommended two courses of action or they recommended some choice. They could either follow one course of action or another course. Mr. Brown was relieved of his duties. He appealed

that. The region of Waterloo now has two police chiefs. It is paying two police chiefs a salary of about \$42,000 each, I think it is roughly. That is \$84,000 for a police chief who is not working and one who is. That is a lot of money, almost more than the Prime Minister of Canada makes.

### Interjections.

Mr. Epp: It is even gets more than the Premier of Ontario makes but not quite as much as Mr. Gretzky makes. The people of the region are, to say the least, very much fed up with the whole situation in Waterloo where we have two police chiefs. You hear it on the cocktail circuit; you hear it all over.

The OPC to some extent helped get us into this situation as I perceive it. They made a report and I am not sure, rightly or wrongly, somebody along the line flubbed it and that is why the situation exists. How do we avoid that situation from occurring in some other region? Surely to goodness the police commission, in all fairness, would since that time I am sure have sat down and asked where they went wrong or where did somebody go wrong and how do they avoid it happening again?

Mr. MacGrath: It all depends. I am not bandying words with you. You referred to some commission. We made our findings. We delivered our findings to the local board and, of course, the local board is autonomous as the act now stands--section 56 as it then was. We made recommendations to the local board and for reasons best know to that local board, they acted.

Mr. Chairman: The courts became involved. I think whenever the courts become involved in a situation like that there is bound to be some delay.

Mr. MacGrath: We have no authority over whom a local board of police commissioners or a committee of council hires as a chief of police. We have no authority whatsoever.

Mr. Epp: Do you have any input?

Mr. MacGrath: Yes, we do.

Mr. Epp: What kind of input?

Mr. MacGrath: We will be requested from time to time, very frequently in fact, to assist a local board in selecting a chief or deputy chief. What we will do is we will empanel three chiefs from neighbouring forces and they will interview and interview. They will compile a short list and they will supply the local police authority with at least three potential candidates, all of whom would make a good chief of police. The final decision is up to the local board of police commissioners. We have no authority whatsoever in whom the local board retains as chief of police.

Mr. Epp: I just want to clarify this. Of the larger list that the commission gives you of the people they are considering, let us suggest they are considering six, then you will whittle that down to three people you think are--



Mr. MacGrath: No. A panel of local chiefs will whittle it down to three with our assistance. We will empanel the local chiefs.

Mr. Epp: You will have somebody from the commission sit on that or one of your commissioners will sit--

Mr. MacGrath: Not the commissioner, oh, no.

Mr. Epp: What kind of assistance?

Mr. MacGrath: One of the advisers or inspectors from our commission will sit with the local chiefs as they conduct, say, the interviews of the final six. But that man of ours, that inspector, does not decide or have any input into whom the panel of chiefs selects to go on for a final interview. They will give them three names from that interview and then the local board or board of police commissioners, or committee of council in smaller forces, make the final decision.

Mr. Raike: If I can clarify that, Mr. Chairman, we make up part of the selection. All we do is convene the chiefs committee and even the chiefs committee does not make the selection. They do what they consider a screening process to see if the applicants are sufficiently qualified to become a chief of police in that municipality. Those names then go forward in the municipality and there is a selection. They are very sensitive about this.

Mr. Hodgson: (inaudible)

Mr. Raike: No. We cannot do it. We cannot impose that.

Mr. McGrath: No. Only on request.

Mr. Hodgson: Only if a local police commission requests you to do so.

Mr. MacGrath: Yes.

Mr. Raike: That is right.

Mr. MacGrath: By and large they do. We are working on three requests at the moment for deputy chiefs of police in various forces across the province.

Mr. Chairman: You mentioned the law, the Police Act the way it is now. Mr. Johnson recommended that the word "may" be changed to "shall." In a situation like that, the police commission then would be making the final decision. Is that correct?

Mr. MacGrath: That is correct.

Mr. Chairman: If you had an inquiry, such as happened in the Brown incident, would you use the same format? The format you used there was the OPC conducted an inquiry knowing that it could make a recommendation with some alternatives.

Mr. MacGrath: Yes.

Mr. Chairman: In other words, it did not have to make the final decision; that rested with the local police commission. But if you changed the act, you would be setting up the inquiry and then it is almost an in-house decision; based on that inquiry you would be making the final decision. Do you feel that is at arm's length enough, it is an unbiased and independent investigation where you would have the final decision to make?

Mr. MacGrath: I would think so, Mr. Chairman, because in the short time that I have been chairman I have not sat on any appeals. My two colleagues have sat on appeals. The inspectors come back or I will receive correspondence relative to an appeal. I do not feel, or I have not felt, that I can go in there with an unprejudiced mind.

Mr. Chairman: You do not think things are too cosy on the ninth floor, that there would be too much intermingling which may affect an independent, unbiased report?

Mr. MacGrath: I do not think so, sir, but I am very impressed with some of the suggestions about perhaps two part-time members to sit on appeals solely. I think this does have a lot of merit.

Mr. Chairman: At the present time, you just have yourself as the one full-time member.

Mr. MacGrath: Yes.

Mr. Chairman: Do you think that is sufficient at the present time, in view of the mandate you have?

Mr. MacGrath: No, sir. I would like help.

Mr. Chairman: You would like to have one of two more full-time members. Is that what you are saying?

Mr. MacGrath: If I could get one full-time member and then have another part-time member perhaps.

Mr. Epp: The other full-time member would be vice-chairman then?

Mr. MacGrath: Whatever title they would wish to give him. The work load has increased tremendously as a result of, again, our reorganization. In the last six months we have seen more boards of police commissioners and committees of council coming into the offices in Toronto, or ourselves going out to explain something about our inspectional process to them, how they can improve their premises, how they can get better value out of their record systems, communication systems. There is not a week goes by when we do not see a local board or a local committee of council, and this is quite an innovative factor. We did not use to have them coming in to see us.

Mr. Chairman: If the act was changed and you had the power to impose your recommendations on the local force--I forgot the question I wanted to ask now.



Mr. MacGrath: Their right of appeal, sir?

Mr. Chairman: Yes.

Mr. MacGrath: They will always have the right of appeal. The judicial process is there, judicial review to the divisional court.

Mr. Chairman: Do they have that now?

Mr. MacGrath: Yes. It is in existence now.

Mr. Watson: Would an appeal process, such as an OMB appeal, be useful, if they could effectively appeal to cabinet?

Mr. Chairman: No. Cabinet would not want it; that is for sure.

Mr. MacGrath: No. I do not think so.

3:10 p.m.

Mr. Chairman: They do not want an appeal where they have the power they have now at the OMB. They want to get rid of it.

Mr. Epp: You alluded earlier, Mr. MacGrath, to the use of propane. You were doing an investigation or something into this or some kind of study. Would you mind elaborating on that?

Mr. MacGrath: We are attempting to do a study on it. There are a couple of forces in the province using propane to advantage at the moment. I do not know how many of the cars of the Vancouver police force, but I think 75 per cent of them are propane-powered at the moment. I know the region of Niagara is very heavily into propane. We are trying to assemble facts from the forces having these propane cars so that we can publish these. But we have to have backup, a lot of material. We do not recommend one car above another; we cannot. But if we can assemble all this material and studies and then publish it, it will benefit a lot of other forces.

Mr. Eichmanis: Mr. MacGrath, your last point about appeal is not too clear to me. Under the act--and I am looking at the old reading of the act--section 57, there is a right of appeal to the courts, but under section 56--and I assume that is what we were talking about--there is no specific mention of a right of appeal to the courts. So there may be some confusion, at least in my mind, under what section you have a right of appeal and what section you do not have a right of appeal.

Mr. Raike: There does not seem to be any section in the Police Act, but it actually has existed.

Mr. Chairman: It would be the Statutory Powers Procedure Act.

Mr. Eichmanis: This morning Mr. Wilson indicated that some of the local authorities may be put into some difficulty as a result of recommendations that you make and then the local

authority that wants to improve itself may go over its budget. When you make your recommendations, are you aware of the budgetary situation at the local community level?

Mr. MacGrath: Yes. We do an intensive study of the local budgetary situation with regional councils. But, again, we are now communicating, we hope, at a much better level with the three realms of policing: the chiefs, the governing authorities and the police associations. I am a strong believer in co-operation rather than confrontation.

Mr. Eichmanis: Another point of clarification. I think Mr. Johnson made reference to the need for the OPC to have the right to enforce recommendations in situations like the Syd Brown case. But what about situations where you are simply dealing with inspectorate reports, recommendations coming out of that which deals with nothing so controversial as a chief of police but simply improvements in the local force? Is there a need for you to have the power to enforce those recommendations?

Mr. MacGrath: More so. Up till now, we have been reacting to problems. Policing is costing so much. We have to spend a lot more time and effort at planning and research as to what policing is going to be like 10 or 20 years from now. If we start preparing now, we are going to be well equipped to meet the future.

Mr. Eichmanis: As well, may we have your reaction to Mr. Johnson's suggestion that where you have inspections, you have, in effect, two inspectors? One would be your inspector or a person from your commission and the other one would be a member of the police association.

Mr. MacGrath: With all due respect, I do not think Mr. Johnson was referring to that. We have a staff of six inspectors. The province is divided into six areas. I think what Mr. Johnson was referring to was the fact that until now the people who occupied those roles were either former chiefs or former deputy chiefs or former chief superintendents.

In the case of the last three men to be hired by our inspection department, if I may take a minute, Mr. Chairman, we advertised the jobs, we posted the jobs in every police station and we took the unprecedented move of notifying the association of these vacancies. We had 46 applicants for these jobs. Ultimately they were short-listed to 15. I was the only one from the OPC who was on a four-man panel to interview these people.

We hired three. As it turned out, all three were ex-Metropolitan Toronto men. Two were inspectors of maybe 10 or 12 years standing. One was an inspector of two months standing. He had just been promoted from the rank of staff sergeant two months prior to our hiring him. Mr. Raike, with your permission, says he wants to elaborate on that.

Mr. Raike: If you don't mind, because I think it is important. Philosophically it seems like a good idea but practically it won't work. Very simply, let me draw a hypothetical



situation of where you have an officer, no matter how well esteemed he is within the police association but never having attained a senior officer's level, going into a police force, telling the chief of police how to run his administration. The chiefs of police will not accept him. I can say that because I was a chief of police. I am very aware of the reaction of the chiefs of police around the province. Quite frankly, they have some qualms even about a senior officer of inspector rank coming in and telling them how they should run their administration. Philosophically great, practically no.

What we attempt to do in our inspection sheet, instead of doing it from the central police association level, we insist that every service officer who goes in for an inspection contacts the local police association and sees what they think and gets their problems. We go one step further because I am cynical enough to think there is a tail-wagging-the-dog syndrome in associations. They are also obliged to contact other members of the force who are not necessarily association executives. From that we think we get sufficient feedback.

Mr. Eichmanis: If I heard the chairman correctly, you indicated that you would not be displeased with the idea of having more members on the commission, some of whom would be looking only at appeals.

Mr. MacGrath: I have to be realistic. We are three at the moment. If we were five, with one full-time member or vice-chairman or whatever they want to call him, I would be quite happy. I would prefer to think also perhaps we are going to need some more inspectors. I would like to think that, budgets being what they are, we could devote some time, effort and money to policy and research planning.

Mr. Chairman: How many hearings have you had in the past year?

Mr. MacGrath: Approximately 20.

Mr. Chairman: Those are conducted by part-time members?

Mr. MacGrath: By Mr. McGrenere and the other member, Dr. Hockin, who has sat on a few. According to the act, I will direct them. We have had two inquiries. Again, I directed because I was seized with prior knowledge.

Mr. Chairman: Do you have any out-of-province assignments?

Mr. MacGrath: We have been asked to help out the New Brunswick Police Commission. They are setting up an inspectorate function similar to our own. Next month the chairman of the Quebec Police Commission is going to spend two days with us to take a look at our inspectoral process and our technical services branch.

Mr. Eichmanis: Maybe it would be helpful if you indicated what the work load of the inspectorate has been, or what the increase has been over the last few years.

Mr. MacGrath: I will have to defer again to my colleague, Mr. Raike, on that. The work load is quite onerous.

Mr. Raike: Do you want the statistics?

Mr. Eichmanis: Yes, if you could, please.

Mr. Raike: I use the word "inspected" advisedly because inspection is rather routine; they used to call them "visits" but we also do a great number of investigations, some of them stemming from the inspections, others quite apart from the inspections. Since January 1, 1981, we have conducted 97 inspections. We inspected 97 police forces out of a total of 127.

If you wanted to go into chapter and verse of all of our other activities, whether it is visiting for the purpose of advising rather than on the telephone or doing investigations, it was in the neighborhood of about 400 with a staff of only six people; three or four of them have been with us for less than a year. They all have very extensive police backgrounds. Again, I am harping on the business of being qualified in the particular areas. The average is probably about 30 years' previous police experience at senior officer level.

Mr. Chairman: I have one question. We talked this morning, especially in the remarks of Mr. Johnson, about the commission and the fact it has improved its credibility and its role vis-a-vis policing by local forces. I am thinking of the situation involving the OPP that happened fairly recently and required a hearing or investigation of some kind. The Attorney General or the Solicitor General decided to call in somebody from the Metropolitan Toronto police force to conduct an investigation. In my opinion, the Ontario Police Commission should have been called in to conduct an investigation.

3:20 p.m.

Do you feel that you now have sufficient qualified people so that when another force, whether it is a provincial force or a large metropolitan force, requires some sort of hearing or inquiry as a result of an incident, the Ontario Police Commission could conduct that hearing and investigate?

Mr. MacGrath: Yes, sir, I do very definitely, and I know what you are referring to. There are a couple of forces where the OPP is involved at the moment into alleged criminal activity by members of that force. So historically we have always held back until the completion of the criminal process. We are now hopeful we will be able to launch parallel investigations without our investigation interfering with the investigation into the criminal process. There are three or four in mind, but two of those are before the courts.

Mr. Chairman: Yes.

Mr. Raike: There is no question at all in my mind that we have the qualified people, but we do not have the authority. We are no longer police officers, so we do not have any authority to investigate a criminal matter.



Mr. Chairman: No, but that should be assigned to you, I would think, assuming you have the personnel, the qualifications and manpower to do that. That is set up by way of a royal commission or a judicial inquiry.

Mr. MacGrath: We did something recently, Mr. Chairman, which was a first also. Bearing in mind the point you have raised, when we have needed a chief of police in the past to go into Vanier or into the town of Tillsonburg, we have had to go to the crown force and second a man from the crown force to act as chief of police in that municipality. We recently had a vacancy arise in the inspection branch, so we did not hire anyone, or we cannot hire as this man is on sick leave. What we did arrange was to have a superintendent seconded by the OPP for a one-year or two-year period. It is just a secondment. I am rather keen on improving our relationships with everyone, including the crown force.

Mr. Chairman: As far as your intelligence branch is concerned, are you satisfied with the support you are getting there?

Mr. MacGrath: Yes, very much.

Mr. Chairman: Do you have the technical equipment, the sophisticated equipment and the manpower you need there?

Mr. MacGrath: Yes. We have, sir, but occasionally we do run short of money and it is a question of robbing Peter to pay Paul when we need funds to finance joint force operations. We seem to be forever in trouble with funds for that particular function--joint force operations. We are making a strong pitch to the Solicitor General to set aside a fund that we could draw upon.

Mr. Kolyn: Mr. Chairman, could I ask Mr. Raika a question? Mr. Sewell was here and was discussing how we should be able to write rules down. He brought up the example of a rock concert. We know that where there are 20,000 people, it would be very difficult to arrest them all. But it brings to mind an incident at a rock concert in Toronto when we had some streetcars vandalized. If I remember rightly, some people were arrested. I just wanted to ask you if you think there is any merit to this particular suggestion of having specific rules, as Mr. Sewell sees it.

Mr. Raika: I am glad you asked me. I have been tempted not to respond to it. I think Mr. Sewell is 100 per cent wrong. I do not think you can lay down guidelines for police forces saying that in a particular situation you do not enforce the law or you do enforce the law.

From a police mentality, it is a passing of the buck. You say to the policeman, "Use discretion," but if he uses too much discretion, you are going to be on him for not enforcing the law. The Police Act is very clear. The Police Act says that every police officer is charged with the responsibility of enforcing the law. It is very hard to define "discretion." I tried to do it myself one day and I came up with the solution that discretion is fine, but always be in a position to have to explain or be prepared to explain why you used that discretion.

But to get to your point, from a very cynical policeman's point of view, I would say that if society, or the law, or whoever was wrong in arriving at that situation had headed the problem off at the pass in the first place, you would not have arrived at that situation where you would have to turn a blind eye to the law. To say that at every rock concert or in every situation you are going to lay off is foreign to the mentality of every policeman in this province, I do believe.

Mr. Chairman: We would have the publishing of notices: "At this particular rock concert we are not going to touch you."

Mr. Raike: Yes, and then everybody is going to come in there knowing that.

Mr. Chairman: Or maybe, "Rows one to 45 will be hit tonight," or something like that.

Mr. Raike: Yes. It is just foreign to the police mentality.

Mr. Kolyn: I brought the subject up because I was mulling it in my mind. We know that a particular streetcar carries about 100 people, and I am sure the Metropolitan Toronto Police would have no trouble at all arresting 100 people if they so desired. I could not figure in my mind what numbers there would have to be before you would not do anything.

Mr. Raike: There are no stated numbers. It is an evolution. Let me go back quite a few years to the time when even at a football game you still knocked off the odd obvious violation of drink on the premises.

Mr. Chairman: Argonaut fans.

Mr. Raike: Whatever. If you want to use discretion, sure; if the guy is a little discreet, if it is not more than once. As a policeman, having been in those locations, if a guy is flaunting it all over the place, I am sure as heck going to arrest him. I could not do otherwise. I could not put my uniform on every day if I did.

But anyway, they laid off that a little bit. Then you move in and I wonder how far we are going to go. He kept zeroing in on smoking pot, but where do you stop enforcing the law? Plus--and, again, we are repeating a point here--that is all right maybe in Metropolitan Toronto, but surely there are some little rock concerts out in the sticks where you cannot enforce it at every offence.

I agree with his philosophy that some discretion is intended, but I do not agree with his approach; I seriously do not.

Mr. Kolyn: I agree with your approach too.

Mr. Chairman: In other words, if you codify discretion, you inhibit discretion.

Mr. Raike: You have no discretion.



Mr. Chairman: Are there any other questions, gentlemen? Thank you very much, Mr. MacGrath, Mr. Raike. We appreciate your attendance and your information.

Mr. MacGrath: Thank you, sir.

Mr. Chairman: Gentlemen, we should take a few minutes to do a little more work. We have never had a quick review of the operations of the Toronto Area Transit Operating Authority; in other words, we have never really explained the operations and what we might find out tomorrow. It might be a wise idea to take just a few minutes to talk about that. I guess we do not need Hansard for that really.

The sitting continued in camera at 3:28 p.m.



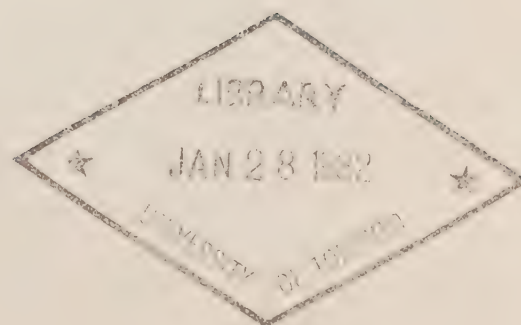


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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCIES, BOARDS AND COMMISSIONS HEARINGS

WEDNESDAY JANUARY 13, 1982



STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)  
VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)  
Breaugh, M. J. (Oshawa NDP)  
Charlton, B. A. (Hamilton Mountain NDP)  
Edighoffer, H. A. (Perth L)  
Epp, H. A. (Waterloo North L)  
Hodgson, W. (York North PC)  
Mancini, R. (Essex South L)  
McLean, A. K. (Simcoe East PC)  
Robinson, A. M. (Scarborough-Ellesmere PC)  
Taylor, G. W. (Simcoe Centre PC)  
Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Assistant to the Clerk: Carrozza, F.

Research Officer: Eichmanis, J.

Witnesses:

From the Toronto Area Transit Operating Authority:  
Burwell, J., Director of Finance  
Leach, A.F., Managing Director  
Parsons, L.H., Chairman



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Wednesday, January 13, 1982

The committee met at 10:23 a.m. in room No. 228.

AGENCY REVIEW: TORONTO AREA TRANSIT OPERATING AUTHORITY

The Vice-Chairman: I see a quorum. This morning we are dealing with the Toronto Area Transit Operating Authority, known as TATO. We have with us Mr. Lou Parsons, who is the chairman of that body. Mr. Parsons, I will ask you first to introduce your colleagues to us for the record and then we expect you will make your presentation to us.

Mr. Parsons: I am pleased to introduce Mr. Leach, who is our managing director and, on his right, Mr. Burwell who is the director of finance.

We have prepared a slide presentation for you which will show you the history of GO Transit up to our present state with the new Milton line that was recently opened. We felt that might either inspire a lot of questions or maybe answer some questions before we get going into the question period. If we may, we will proceed with the slide presentation.

The committee viewed a slide presentation for from 10:24 a.m. to 10:30 a.m..

On resumption:

Mr. Parsons: I guess, Mr. Chairman, based on the press reports, that is not as exciting as some of the movies you have seen in this room.

The Vice-Chairman: But more productive. Mr. Parsons, do you wish to make an additional presentation?

Mr. Parsons: No. At this point we would be happy to receive questions from the committee.

Mr. McLean: Your film indicated that the GO train and the services did go to Barrie. Do you feel it is feasible to continue the run that is presently there and that is going to be discontinued by the federal government?

Mr. Parsons: Mr. Chairman, I shall answer Mr. McLean's question by saying that we have had exploratory conversations with Canadian National management. As you know, that is a Canadian National line, and it has been stated in principle that there is no reason why the track time that is being used by that Barrie train now could not be made available for a train that would replace it, be it a GO train or whatever other arrangements are made.

I think we must await the decision of the Ontario government because, as you know, we are an operating authority as to what it wishes done. Once the cabinet has made that decision, we shall be ready, willing and able, provided the money is provided to us, to go in and replace the Via train that will be lost out of the Barrie area.

Mr. Epp: Mr. Parsons, what are your plans at the moment for expansion into other areas, such as the Waterloo region and other areas?

Mr. Parsons: Perhaps I may start, Mr. Epp, by saying that our first priority at the moment is a study, which is very near to completion, for the extension of the rail service to Oshawa. This is a study that has been under way for quite some time, and it is to be in our hands by the end of January this year.

There are only so many studies that one can do at one time, as you might imagine, and that is the one that has been really highlighted by many of the representations that we have received both at the GO board level and at the political level, I would assume, from Durham region and also with presentations made to the province. At the moment, the westerly limit of our service, as you saw in the film, is Guelph, and there has been no consideration given to any extension beyond that at this time.

I would point out, Mr. Chairman, that the planning of any extension of service is the responsibility of the Ministry of Transportation and Communications. When we receive a request, as we recently did, for an extension of full-level service to Hamilton and on to Stoney Creek, we refer it to the ministry which is going to be giving consideration to that request. So it really does have to go to the ministry. We are pleased to receive any submissions that you might like to make to us, but we would then forward them on to the ministry for review by their planning officials.

Mr. Charlton: Do you make comments to the ministry on things like that?

Mr. Parsons: Where we have information that we believe to be helpful, we certainly would, but much of it is starting from scratch, when you get into talking about extension to Waterloo, for instance.

Mr. Epp: One of the concerns of people in the Waterloo region, and I am sure in other regions--and I just want to see whether they have been expressed to you--is that GO Transit helps make these communities bedroom communities in the sense that people live there but work in Toronto. I am sure you have heard that before.

Mr. Parsons: Yes.

Mr. Epp: In fact, when I suggested some years ago, when I was on municipal council, that we have some kind of commuter service to Toronto, that was one of the big reactions by people like Bill Thomson and others, who felt that would just make Kitchener-Waterloo a bedroom community of Toronto and people would commute into Toronto. Have you heard any of that reaction?



Mr. Parsons: We have. We have heard both sides of that story. It is interesting to note that back in the early days of the Durham region, when I think Mayor Potticary was in office, he took the precise stand of you are stating, that it was going to make it a bedroom community, and therefore they should not encourage the extension of full service to Oshawa.

The table has now turned. Oshawa is constantly reminding us that it needs full rail service, and it is the same with the Stoney Creek and Hamilton submission I just mentioned. It somewhat astounded us when we received a delegation last month from the Hamilton Chamber of Commerce, saying to us, "Please extend full service to Hamilton and on to Stoney Creek."

Mr. Charlton: Full rail?

Mr. Parsons: Full rail. That might make people believe that it might encourage the bedroom community syndrome, but the people are expressing the interest in the service regardless of that; maybe times have changed because of the cost of fuel.

Mr. Epp: The other thing is that people maybe are travelling anyway, and therefore if they are going to travel, they may as well travel GO Transit or something of that nature.

Mr. Parsons: Yes. That may well be the reason.

Mr. Epp: The fact that we do not have GO Transit to Kitchener-Waterloo has not prevented people from using that in some sense as a bedroom community. They still travel back and forth.

10:40 a.m.

Mr. Parsons: Yes. I suspect that there are a lot of people who drive from Waterloo to Milton and are now parking their cars at Milton and taking the new Milton service. We are exceeding our demand forecast substantially out of Milton within the first two months of the service, and it seems that is because of the railhead out your way we are having such success with that Milton station.

Mr. Epp: How much time does it take to travel from Milton to Toronto?

Mr. Parsons: One hour and five minutes from Milton to downtown Toronto, which is very excellent timing.

The Vice-Chairman: Has the ministry defined the commuter shed? How far out does it go at present? Have you any projections how far a commuter shed will go? Assuming that there are people even beyond Kitchener--one or two--generally, where is the commuter shed for Metro Toronto in the future?

Mr. Parsons: We really haven't defined that. We know that our act takes in the municipalities that you saw on the film presentation, but once again it really isn't our responsibility to try to define commuter shed because, while you might have commuters from Waterloo going to Hamilton, there would be others

who would be coming from Hamilton to Oakville and so on. So you would have stops and starts of commuter sheds, and that really is the planning function of the ministry.

The Vice-Chairman: You just go where they tell you to go and, except on a consultative basis, you don't get into the planning as such.

Mr. Parsons: No, we don't.

Mr. Robinson: I have a couple of questions of Mr. Parsons. You try to maintain a very delicate balance between the fare structure and the actual cost of the private automobile. With that in mind, I understand that your financial viability at least in that aspect has been severely damaged by your new contractual arrangement with Canadian National.

I understand the people's railway is not necessarily being ungenerous but is taking a much more strident and different position than it has to the development of GO Transit to this point.

Mr. Parsons: I think, Mr. Robinson, what we attempt to achieve is the directive that we get from the provincial government rather than the ratio of cost of GO fares to the private car. We are given a mandate to attempt to get our cost to revenue ratio to 65:35. Every time we are faced with excessive demands by railways for service costs and every time the fuel price goes up, we find ourselves slipping away from that 65:35 ratio. Today we are at about the 50:50 ratio and it's an ever-present task to try to do what we are being told to do by Management Board in so far as the cost-revenue ratio goes.

To answer your question about the railway contracts, the railways very much held the whip hand. When negotiations were carried out with Canadian National for the renewal of the contract, which is now some four years old in a 10-year contract--the time goes by so quickly--they simply laid the ground rules on the table and said, "This is what we demand."

It included the cost for the use of not only the physical plant that we used rolling on the rails, but also a cost towards the value of the railway right of way, which we contend is owned by all the people of Canada in the Canadian National situation and by a private corporation in the Canadian Pacific. It ended up that the document that was put on the table was the best deal that could be made after a great deal of negotiation. As a result of that, we find ourselves paying to Canadian National in 1981 about \$28 million for the operation of the GO service on Canadian National lines.

Mr. Robinson: The number is only relative to what you may have been paying before. Is it fair to say that when GO Transit, particularly GO rail started up in the late 1960s, that CN was more than eager and enthusiastic to have someone share its cost load on that trackage?

Mr. Parsons: Not only the cost load, Mr. Chairman, but the railways were anxious to get out of the passenger business, and



they saw someone coming along, and it happened to be the Ontario government when GO Transit was started in 1967, to get them out of that business. I suspect that once they got out of it, they may have changed their attitude about increasing their revenues. That's probably what it was.

Mr. Robinson: Without trying to be provocative, what has happened is that they have encouraged you to take over some of their unprofitable services. Now having done that in a very successful and expanding way, they are putting it to you on the other end.

Mr. Parsons: Exactly, and, of course, now they have Via Rail to help them out on the other situation where they have taken over all passenger services and Via Rail pays rather dearly to Canadian National for the services provided to it.

Mr. Robinson: You have indicated that you have a 10-year contract which is now four years old. Are there escalators built into that contract?

Mr. Parsons: Yes, there are.

Mr. Robinson: Can you give me a brief description?

Mr. Parsons: I will ask Mr. Burwell, our director of finance, to reveal that information.

Mr. Burwell: Mr. Chairman, the basic contract with Canadian National is a cost-plus arrangement where we reimburse the National for all the costs they incur, both direct and indirect costs, and then on to that they add on a nominal profit factor.

Mr. Robinson: There are two things that come out of that. Until this contract, they did not expect to profit at the expense of GO Transit. Is that correct?

Mr. Parsons: I wouldn't say they didn't expect to profit. I would suspect they very much expected to profit.

Mr. Robinson: They didn't build a profit factor into the contract, as I understand it.

Mr. Parsons: In the initial 1967 contract, they did not build in a profit factor.

Mr. Robinson: In other words, one government is in fact paying a profit to another government, or to a crown corporation.

Mr. Parsons: The CN says they are not government, that they are a profit-centred organization that does have to report to Parliament. Of course, they report a handsome profit. If you take a look at what we pay them and what their profit is, their profit would be much different if GO wasn't in business.

Mr. Robinson: On your fare structures for a moment, as a result of this contract and the escalators--I appreciated the

answer but I guess I wasn't clear enough in the question--that are built into the contract, do you find as a result of those and your fuel costs that your fare structure ratio is increasing at an annual rate greater or less than the rate of inflation?

Mr. Parsons: Over the last four years we are below the rate of inflation. In 1981-82, our fare increase amounted to 18 per cent, which is substantially more than inflation, but we had not had an increase for some 18 months when the last 18 per cent increase came in. We are looking at ever-increasing rates if we are going to come anywhere near what the government has directed us to do in achieving that 65:35 ratio.

Mr. Robinson: When you have significant rate increases, such as the 18 per cent you anticipate this year, is there a marked drop in ridership for a period of time?

Mr. Parsons: No. In fact, the opposite has been true. I suppose it is the same scene in the Toronto Transit Commission. Last year they had a substantial raise and they also increased ridership. So do we. We have been increasing at about 10 per cent per year in riders in spite of fare increases. It is interesting to note that when the fare increase came in at 18 per cent, there was hardly a complaint.

Mr. Robinson: Let me ask you one loaded question and then I will leave you alone for a while. If you were directed by Management Board to instantaneously revert to your ratio of 65:35, if you had to increase your fares to match that 65 per cent revenue, do you think that would produce instantaneously a drop in ridership?

Mr. Parsons: I would think it would. I think it would also bring on some demonstrations.

Mr. Robinson: From a fare box standpoint, what kind of dollars are involved in that? What does a trip from Pickering to Union Station cost? If you had to go to a higher revenue ratio, what would the fare be potentially?

Mr. Parsons: If we had to instantly go to the 65:35 ratio?

Mr. Robinson: Yes.

Mr. Parsons: May we have a minute to work that out?

The Vice-Chairman: To verify something Mr. Robinson is asking--you talked about your rates on CN--are the CN charges going the same way as they charge Via Rail?

Mr. Parsons: No. There is a myth that has been perpetrated that Via Rail has a better deal than GO. We have spoken publicly a couple of times to say that is not quite true. Some people want to help us by getting the same deal as Via. It is not as good a deal as we have.

The Vice-Chairman: In and around Toronto we operate the commuter. Around Montreal I believe it is operated still by CN?



Mr. Parsons: CN, and I think CP still has one train to the west end.

The Vice-Chairman: Have you any figures as to what the CN charges themselves on that commuter as compared to what it charges you? Is there any federal government subsidy into that one as compared to the federal government subsidy we get for GO?

Mr. Parsons: There is no federal government subsidy we know of for the operation of the Montreal commuter service. I think CN and CP are still bearing a burden there. But that is presently under negotiation with Conseil des transports de la région de Montréal, the organization that is responsible for urban transit around Montreal. It is interesting to note that substantially more federal money has been poured into Quebec, particularly in the Montreal area, in the aid of urban transit than has been the case in Ontario. We have made that point with the federal government on many occasions but without much success.

The Vice-Chairman: I am specifically wondering what CN charges itself for the trackage for its commuter train as compared with what it charges you? Do you have any handle on that at all?

Mr. Parsons: No, we don't have a handle on it and they don't like sharing that kind of information for some reason.

Mr. Watson: I would like to explore this philosophy of working with the railroads. I am sure it is going to come out in many different ways today. I want to talk about your sharing of stations and the relationship of trains and buses and your ability to work out the use of the same facilities. I have a problem in Chatham and I think Mr. Epp has a problem in Kitchener. I have kids who go to the university in Waterloo. Last weekend I said, "It is stormy. Take the train." They say, "The bus won't even stop at the train station in Waterloo." I do not know whether that is right or not.

10:50 a.m.

Mr. Epp: We did not have any snow. We had sunshine all weekend.

Mr. Watson: Do the city buses interconnect at the train station in Kitchener?

Mr. Epp: No.

Mr. Watson: They do not in Chatham either. In fact, when they put a new bus station in Chatham, the bus people purposely went out to the other side of town, which is utterly stupid and ridiculous. If somebody comes in, in my case from Wallaceburg, if he is a handicapped person or a person who is on social assistance or something, and there are a lot of those people who use the public transportation system, he ends up on one side of town and he has to go to the other.

To me, a sensible person says, "We should have a transit centre," and because the rail lines are the ones that are fixed, that pretty well dictates where the transit centre has been. I

realize you do not deal with my problems, Herb's problems or those kind of things, but I sense the reason we do not have this is in part the lack of co-operation from the railroads. I would like to explore the idea of whether in your picture, and I assume you do, you have these intermodal connections put in.

Mr. Epp: Pardon me, but I think you are going a little too far. For instance, the train station was there first. Gray Coach built its location after that and the city of Kitchener built its after the train station was there. So they could have easily picked up property in Kitchener-Waterloo, for instance, near the train station and interconnected it.

They chose not to because they did not want to be interconnected. I think you are being unfair in trying to blame Canadian National or Canadian Pacific. They had a train station first and the others located in different places afterwards, so they could have taken the initiative. Anyway, go on.

Mr. Watson: I do not know whom to blame, but I am saying that I have the problem and I think Herb has the problem. I think there are a lot of other centres that have it. I think a lot of it is the competition. Down our way they blame the bus lines. They said: "We don't want our people to be sitting at the train station. When the train comes along, they would take the train instead of taking our bus."

The point I want to get around to is you have in a lot of cases obviously solved this impasse, regardless of whose fault it is. Can you give me some ideas or philosophies as to how you did it? Is it strictly a matter of dollars that talk or how do you swing around their philosophy?

Mr. Parsons: May I start off, Mr. Watson, by agreeing with the answer that you gave to the question you were asking about the bus operators not wanting to be close to a railway station. There is no doubt about it. Each jealously guards each other's market. The railways want their market and then the buses want their own. The fact that Via Rail is so heavily subsidized for passenger fares and the buses are not makes the bus operators want to keep away from the centres of rail activity.

To answer the other part of your question as to how we have dealt with it, if you take a look at the lakeshore line running from Pickering out to Oakville where we have full service, with the exception of Guildwood, Union Station and Oakville, all of the stations are GO stations only. The VIA trains do not stop there.

Where we do have the arrangement with VIA, for instance, at Oakville, we have created there through co-operation with Oakville Transit really the centre of Oakville's transit activity right at the station. It is the kind of thing you would dearly love to have from the comments you make, I would think, but it is because we have encouraged it by having the great volume of passengers that we bring to Oakville.

For instance, at rush hour in the evening we have two trains that arrive there within minutes of each other that would drop off almost 2,000 people within a 10- or 15-minute time span. We have



been able to do that with Oakville Transit and Mississauga Transit. Brampton has the same situation where we have the bus timetables tying in with the train timetables both in morning and evening rush hours.

The Vice-Chairman: That is the local buses, not your own transit?

Mr. Parsons: No, the local buses. We don't operate bus service within the regions. We operate it interregionally, but that is the way it has worked for us mainly because we have been the co-ordinating body that has encouraged local transit in the situations of Oakville, Mississauga and Brampton to be co-operative with us. To take the private bus industry and expect them to create a transit centre around a train station, I don't think is going to happen, much and all as it is desirable.

Mr. Watson: This is one of the frustrations I have. There comes a point when one must do something for the good of the travelling public rather than because someone jealousy guards it. I appreciate the subsidy that comes in to Via and the jealousy there. In my community it was the bus people who operate the bus system for the city that tried to put together a transportation centre and were prepared to put some money into it to have it located at it.

Again, I guess this is not your business, but it is wrong that there is no municipal bus stop right at the door of the train station in my municipality. It is wrong that there is no municipal bus stop right at the door of the train station in Waterloo and Kitchener.

Mr. Epp: Pardon me. That is a very interesting concept. I think it is an excellent one. I agree with Mr. Watson 100 per cent. If these were co-ordinated, I think a lot more people would be using public transit in whatever form because they could go there. If the train is half an hour late or an hour late, maybe they could use a bus, but they would not have to travel halfway across the town to get to that particular part.

I would think the losers in a system of that nature, and you would have quite a powerful lobby, would be the taxicabs. Every time a train pulls in, there are half a dozen taxicab drivers waiting to pick up fares. If you had buses there, the local service and so forth, they would lose some of that business but, as Mr. Watson points out, it certainly would serve the public much more effectively than the current system does where you have to travel a mile or two to get another mode of transportation except for a taxi.

Mr. Parsons: I don't think there is any better example, Mr. Chairman, than the one you know very well, and that is the Toronto situation where we have Union Station, which is the hub of rail traffic and we have the Gray Coach bus terminal away up Bay Street. In spite of efforts put forward by many people and encouragement given by politicians at least at two levels of government, there still is no response it seems from Gray Coach to have a transportation terminal that would put the buses down near the train tracks. They are still saying they want to be where they are.

The Vice-Chairman: You remember a thing called Metro Centre which died after the other group took over city hall in 1973. It was the thing that was all ready to go in the new Metro Centre out of Union Station with all of that there, but for some reason the city of Toronto politicians decided not to proceed with that plan, but there was a plan 10 years ago to have an integrated transit terminal as part of a new Union Station.

Mr. Epp: Mr. Parsons, I suppose the people who could really make this happen would be the province because they are the ones who distribute the licences and nothing talks like that. If these people were to lose their licence or not have it extended until they gave the kind of co-operation that the province wanted in co-ordinating these services, then they would co-operate. So the province has the clout if it wants to make it happen. The government really has the clout if it wants to make it happen.

Mr. Parsons: That really is far beyond our realm.

Mr. Epp: I recognize you don't have that, but you do have some lobbying power.

Mr. Parsons: Very little because in the public bus industry we deal only with Gray Coach, which is quasi-public and is owned by the TTC, by Travelways and by Charterways. That is the extent of our subcontracting with private bus operators. Then you get into Voyageur and all of the other bus operators in the province and they are a very powerful group in their own way.

The Vice-Chairman: Who makes the decision where the bus terminal is located in a municipality? Does the municipal government not have some say in where a bus terminal goes as well?

Mr. Epp: You know the way things work, Mr. Chairman, and I am not trying to be partisan at all. All I am saying is that the province does give out the licences to these. They give out substantial grants on a number of things and they could make it work if they really want to make it work. Now, mind you, there may be some losses, but there could be a lot of gains.

11 a.m

The Vice-Chairman: In Kitchener-Waterloo, is the bus terminal privately owned or city owned?

Mr. Epp: I am sure it is privately owned. Gray Coach would own that. Gray Coach also gets its licence from the province.

The Vice-Chairman: Gray Coach is not private; Gray Coach is a public company.

Mr. Charlton: I want to cover two areas. First of all, you still have one run that is on the CP track, I believe.

Mr. Parsons: It is a new run. They just commenced service in November. That is the run to Milton.

Mr. Charlton: What kind of deal do you get from CP as compared to CN?



Mr. Parsons: It is not a whole lot different to the CN contract. We suspect they had the advantage of knowing what the CN was charging us and they very much used it in the negotiations that we carried out with them, which date back four years ago when the negotiations commenced. The service only commenced two months ago.

Mr. Charlton: You mentioned the request for extension of full service to Hamilton-Stoney Creek. I do not want to put you in a position of commenting on things that it might not be appropriate for you to comment on at this point, but we had a discussion three or four years ago about that very matter in the Hamilton area and were told at the time it was not really feasible to do that because of limited trackage. Is it possible to overcome that problem in a reasonable way?

Mr. Parsons: I suppose everything is possible given the dollars to do the job. To solve the Hamilton problem, we first of all have to solve the Burlington problem. At the moment, as you know, we have limited service to Burlington and that is because of lack of track capacity through the throat in Burlington where you have the line from the north coming in and meeting there. Until we get past that situation, we cannot solve the Hamilton problem.

Mr. Charlton: Is it economically feasible, in co-operation with the railways, to solve that problem? In other words, is this request just made in vain or is there some potential to solve this problem?

Mr. Parsons: Is it within the purview of the 65:35 ratio? Would that be another way of asking that?

Mr. Charlton: That, plus is there anything in it for the railways, who are obviously going to have to put in any additional trackage that is necessary.

Mr. Parsons: This is the catch. That is what I said about the money. They do not put in the trackage unless we write the cheque. They will say to us, "If you want full service into Hamilton, drop a couple of hundred million dollars in our lap and we will widen the tracks and we will build new bridges and we will do all that is necessary to get the trains into Hamilton on a full-service basis."

Our experience with the trains out of Hamilton is that while they are very convenient, they are not carrying a lot of people. Some say that is because we do not have a lot of trains. But, for instance, on the early morning train that comes out of Hamilton, the last time I asked the question, I think I was told there were something like 20 people.

Mr. Leach: There were 11 on the first and 135 on the second.

Mr. Parsons: There were 11 people out of Hamilton on the first train that we send over there especially to bring people back to Toronto, and on the second, 135. It is not really encouraging. It could be argued that if we had more trains we would have more people thinking about travelling the trains, I do not know.

On the other side of the coin, we have an extensive bus network out of Hamilton. I am sure you see the buses on the roads coming in from Hamilton. They carry substantially greater numbers of people. Part of it is because, I suppose, our buses are closer to where the people live and they can get to the bus stops, whereas the downtown Hamilton station means a backward move for an awful lot of people. People will not take backward moves when they are heading for work.

Mr. Charlton: I can tell you this much about the Hamilton situation--and I do use the GO buses sometimes--the two trains a day that come out of Hamilton for me do not happen to be at the right time, so if I am going to take GO, I take the bus. But the bus, because of the times I am taking it, is a little bit slower than what I would like. The potential in Hamilton for passengers on the trains is really huge. If you look at the number of cars coming out of that city in the morning and follow them to where they are going, the bulk of them are going to some place between Hamilton and Toronto or right into Toronto itself.

Mr. Parsons: It may be that what might be explored by the MTC planning officials is putting some kind of an outpost station--I do not mean outpost in the sense that it would be small, but rather a major facility--on the outskirts of Hamilton before you hit the Queen Elizabeth Way so that people would not making backward moves and they would arrive at a grade station where they would get on a train and ride to Toronto.

Once again, this is going to have to take a lot of planning. We have asked the region of Hamilton-Wentworth to do a market study to determine what the demand forecast might be. They have responsibility for transportation.

Mr. Charlton: For example, right now your two trains are coming out of the CN station in Hamilton. I recall several years ago when you brought the bilevel train into Hamilton for a--

Mr. Parsons: Dog and pony show.

Mr. Charlton: Yes, you brought it up to the TH and B station. Is there any potential to negotiate around making that the centre for--

Mr. Parsons: That certainly is an alternative.

Mr. Charlton: That would be much more convenient in terms of the public transit system in Hamilton.

Mr. Parsons: It is an alternative but a very expensive one and, once again, one that would have to be reviewed by the planning officials of MTC. If they determine that the other things we are working on, such as the Oshawa extension, are in hand, that is one of the things they might determine to do next.

Mr. Breaugh: Could you update us about the Oshawa extension?

Mr. McLean: Mr. Chairman, I think I am next. I had been waiting to ask a question before you came in.



Mr. Breaugh: Go ahead.

Mr. McLean: The cost seems to be with the tracks. Is there any other jurisdiction that you know that compared with the GO service here with regard to what agreements they have with the federal government on the payment for tracks?

Mr. Parsons: No. GO Transit really broke ground in this regard with the introduction of the GO Transit service some time ago. There is not another municipality or province in Canada that we know of that has any arrangement formalized with the railways at this time. Vancouver has been working on one. There have been plans to introduce suburban train service into downtown Vancouver. We understand negotiations have been recently terminated because a cost figure that started out as something rather reasonable and maybe attainable ended up to be totally unreasonable. From what we hear, we think discussions are no longer going on with Canadian Pacific in that case.

Mr. McLean: In the foreseeable future, after your contract of another six years is done, in your mind what do you think is going to happen? Do you think we are going to be paying a lot more for the tracks? Do you think we are going to be able to make a deal more acceptable to the government than the last one was?

Mr. Parsons: I think the only hope for a better deal might be that there might be some direction given by the federal government to Canadian National and possibly to Canadian Pacific as well, although they do not have the same jurisdiction over CP, that they deal with us more fairly, having regard to the fact that we are working on public rights of way. The CN executive will answer that by saying, "Our directive is that we are profit-centred and we do not think we are charging you too much." It is sometimes facetiously said, "Would you like to do an estimate to see how much it might cost to construct your own rights of way?"

The Vice-Chairman: What would CN be without the revenue from you if you did construct your own rights of way?

Mr. Parsons: They know the answer to that is not a very palatable answer.

Mr. Robinson: Dealing with the operation of the trains, what is the division of operating personnel between those who are employed by GO Transit and those who are employed by CN?

Mr. Parsons: All the people involved in the operation of the train as the wheels roll are Canadian National employees and their supervisors, of course, are Canadian National employees as well. If you were to go into Union Station today, you would see personnel looking after the comings and goings of the GO train passengers and they are all GO train, government of Ontario employees.

Mr. Robinson: So the GO train system runs simply as an adjunct, an integral part of the Canadian National timetabling?

Mr. Parsons: No, not Canadian National timetabling.

Mr. Robinson: I mean timetabling from the extent of it being one master control as to who uses the rails at what time. I do not mean scheduling.

Mr. Parsons: That's true. We must be at the right place on the tracks at the right time to make sure that their VIA trains pass us and freight trains move around us and so on. We are very much a part of their master plan.

Mr. Robinson: Is it an advantage or disadvantage to not have your own personnel operating your own equipment?

Mr. Parsons: You could not have our own personnel operating equipment around their personnel operating freight trains and VIA trains. It simply would not work. Legislatively, it would not be possible either.

Mr. Robinson: Is it an integral part of the agreement that you use their operating personnel and procedures?

Mr. Parsons: Yes, very much so.

11:10 a.m.

Mr. Breaugh: When do we get the GO trains?

Mr. Parsons: I suspected, Mr. Breaugh, you might want to know the answer to that. I did answer your question just before you came into the room. We are expecting the completion of the Canadian National study, which you are aware has been going on, and it is to be in our hands by the end of January. Once that study is in our hands, it will be reviewed by the Ministry of Transportation and Communications officials with us and a determination made as to what reaction there will be to the study. As to when we get the trains, until the study is in and the costs are known and consideration is given by those who hold the purse-strings, really we cannot answer that.

Mr. Breaugh: Do you see the problem as being essentially one that is in-house, your own priorities, or elsewhere?

Mr. Parsons: No, certainly not our own priorities. I mentioned before you came in also, and you will recall, Mr. Breaugh, that back in the early 1970s Oshawa was adamant that it did not want GO trains. Had it been positive rather than negative back in those days, we might well have trains running in there today. I think you have heard the answer from other people that it takes nearly six years from the time a decision is made for the introduction of a new service, for instance, in Milton, to the day the service starts running. Had we had encouragement from Oshawa many years ago, the service might well be there today.

We recognize that there is a pent-up demand out there for GO trains. We recognize that people would certainly sooner ride a train all the way to Oshawa than they would transfer to a bus at Pickering. We are cognizant of that, and Gary Herrema, the chairman of Durham region, reminds us monthly about the importance.



Mr. Breaugh: It is an interesting exercise in planning, I suppose, with hindsight that with the imposition of regional government should have come the acceptance that at some time a commuter rail service is going to be essential. But then you may recall that in the mid-1970s we were sold the idea that we would establish a kind of self-contained region, which never did materialize. Out of that, in subsequent housing policies, came a tremendous number of commuters whom we did not have prior to that point, so the whole nature, shape and form of the region changed substantially in a 10-year time period.

Is there any solution that you can see on an interim basis? It really does take two hours and, for somebody like me, about five transportation changes to use the GO system, which virtually eliminates it. I suppose for most people who work regular hours, it is an alternative, and they do use it. But for those of us who don't work regular hours or would have some difficulty with spending four hours a day in transit, it really makes the whole GO system not a practical solution, not practical in financial terms for a number of people.

Mr. Parsons: A quick and dirty study would reveal--and we have heard these comments from Canadian National--there simply is not the track time at Oshawa today to put even one GO train into Oshawa, and we had thought of that as being a possibility over the years. The fact is, and I guess nobody knows it better than you because it is your community, that with the cross moves on those tracks for the General Motors operations out there, with the heavy volume of freight traffic that goes between Toronto and Montreal, with the heavy passenger traffic at the rush hours, morning and night, I guess all one would have to do is stand beside the tracks out there and come to the conclusion there really isn't time for a GO train operation in there with the other trains that are on that track. CN was telling us long before the study was commenced that it was its feeling we are talking about an additional track out through the Oshawa area in order to accommodate GO trains that would serve Oshawa on a full-time basis the way we serve Pickering.

Mr. Breaugh: What about the alternative that has been suggested of using the CP line?

Mr. Parsons: That has not been studied in depth and would have to be by the MTC planning officials. I hate running back to that as an excuse for not being able to answer a question fully, but it is the truth that the MTC planning officials would have to take a look at that, and I really do not know how long that would take. I think we would be best to await the CN study and the conclusions in that.

Mr. Breaugh: In assessing what you might do, are you giving much of a priority to the concept that you would run a rush-hour rail service, perhaps one in the morning and one back in the evening?

Mr. Parsons: Once again, when the study comes out and determines what it would take to give us any capacity to Oshawa, we would then determine what kind of service would be possible to the area. I don't think one in the morning and one at night, while it

would be some relief, would really please the Oshawa citizens that much. As Mr. Charlton mentioned, we have two trains out of Hamilton, but they are not at times that suit the majority of the population there. Unfortunately, they are there at the time we have to have them there in order to get them to Oakville when we need them most for the influx of people who want to come to Toronto.

Mr. Breaugh: So you do not have any real commitment then to provide that rail service, even on a long-term basis?

Mr. Parsons: At this point in time, until that study is in hand and until the Ministry of Transportation and Communications reviews what the study is going to say and what dollars are going to be involved, we do not have an answer, no. As you know, we are an operating authority that operates what is given to us by the province.

Mr. Breaugh: When you set up your bus service out through the Bowmanville area, I am not sure exactly how that came about, because it seems to me you now run an intermunicipal transit service in the region of Durham.

Mr. Parsons: Interregional in that it is Bowmanville to Toronto.

Mr. Breaugh: Yes.

Mr. Parsons: Yes, that is true.

Mr. Breaugh: And you basically provide a transit service, say, for the town of Newcastle, that it otherwise would not have. Is that intentional?

Mr. Parsons: In that it is on the route between the two points, yes. We don't think we operate a service that services two points in Newcastle, although people may ride it that way. It is certainly not our plan to do that. It happens to be on the route the bus takes. I do not know how many users we would have who would get on and off in Newcastle. I would not suspect very many.

Mr. Breaugh: The bus aspect of it has caused a number of problems in there. Is that a money-making operation? I can't imagine it would be.

Mr. Parsons: No, it is not a money-making operation. On some routes, if you had 100 per cent of your buses full 100 per cent of every mile you rolled, you would make money, but keep in mind that when a driver starts, for instance, in Bowmanville in the morning, by the time he gets to Toronto his tour of duty is over for that morning. You cannot take him back to Bowmanville because there is not any market back there when you get there, so the drivers operate for a couple of hours in the morning and a couple of hours in the evening and that is their day. So it is very difficult to envisage a profit ever out of a commuter bus operation.

Mr. Breaugh: Do you co-ordinate with, say, the Oshawa PUC in its transit system schedules?



Mr. Parsons: Yes, we do. We have great co-operation with all the municipal transit systems and Oshawa is certainly no exception. We also buy fuel from them, we park buses with them and get along very well with them.

Mr. Breaugh: You have a servicing arrangement with Oshawa Transit?

Mr. Parsons: Yes. Oshawa looks after our out-post buses overnight so that they do not have to be brought back into Toronto and dispatched back out there in the morning, and it works very well.

Mr. Breaugh: You seem to have a number of buses and trains that operate with not very many people on them a large part of the time. Have you any solutions to that? I understand you are going to have that problem perpetually, but it seems to me you have vehicles in transit there with a very low ridership on them a high percentage of the time. Is that just wrong observation on my part?

Mr. Parsons: I don't think it is necessarily a high percentage of the time. On the Lakeshore line, where we have full service on the train line between Pickering and Oshawa, there are certainly points in the day when the seats are not all going to be full, but it is really quite amazing to go to a station like Guildwood or Clarkson at noon hour and see how many people do travel the trains. While, as I say, they are not full buses, I guess it is akin to Oshawa Transit or Mississauga Transit at noon hour. You do have big GM buses rolling around the corners that do not have many people on them. It's part of the system and the service that people have become used to over the years, and it is not something that would be easy to take away from them.

Mr. Breaugh: Can you give me a little explanation as to why you discontinued the dial--a-bus service you had in Pickering?

Mr. Leach: Dial-a-bus was originally GO Transit, which was then turned over to the municipalit, and which is now, I understand, being disbanded. They are going into a fixed route system.

Mr. Breaugh: So they are going to be in transition then?

Mr. Leach: Yes.

Mr. Parsons: I do not think anywhere in the province, and probably around Toronto we saw more examples of it than anywhere else, did dial-a-bus work out. It was tried by the TTC in north Toronto, it was tried out your way, it was tried in Brampton, and in each case it was abandoned as being far too costly per passenger.

11:20 a.m.

Mr. Breaugh: What have you got in mind to solve the parking problem, which is almost a catch 22 there? You have got it in Oshawa, you have got it in Pickering and you have expanded the lot in Pickering. Do you have any solution for that?

Mr. Parsons: It's an ever-present problem, Mr. Chairman. The more riders we get, the more parking spaces we need. It's interesting to note that recently we opened up 500 new spots, for instance, in Clarkson, and while the second day the lot was open it had a full lot, we didn't carry 500 more people. It seemed that the people who had been getting to the station with their kiss-and-ride partners or taking public transit, all of a sudden, because there was a parking spot, descended upon the parking lot.

It's really something we are trying to change by having fare integration with municipalities. We now have fare integration in Oakville in the west, in Brampton and in Mississauga, where in Oakville and Brampton for the price of your monthly GO pass, or your GO ticket for a single ride, you can get on a bus at the corner nearest your house, get off at the GO station, go through a fare-paid area, get on the train and get off downtown. We are doing this to encourage people to leave their cars at home, and it has been an instant success in Brampton and Oakville.

The Vice-Chairman: Are you trying to do that throughout your system?

Mr. Parsons: We have offered it to every municipality, and it's being considered by others.

Mr. Breaugh: Is Oshawa at this time actually considering it?

Mr. Parsons: We are in a different situation there because it's the bus rather than the rail, and we have only been operating it on rail. Certainly we would sit down and explore it with Oshawa.

Mr. Breaugh: That's an interesting concept, and one which might solve some of the fist fights in the parking lots, which we oddly enough do have.

When you go through this exercise with Canadian National, it strikes me as an observer that if an arrangement to use those tracks is desired, it can happen. Would you generally agree with that?

Mr. Parsons: It does happen. That's what we are doing now.

Mr. Breaugh: What I fail to understand is that CN, in providing rail service through our area, has cut back again with Via Rail cutbacks. It never did have a very high-profile service in that area, but it did run the service and has since discontinued it. It strikes me as quite a reasonable thing then--and it seems to me I saw Pepin make some statements along this line--that he would drop out of that commuter service and he expected the provinces to enter the picture. It strikes me that if the federal minister says something like that, it should open the door for the province and GO Transit to move in.

Mr. Parsons: It might also be considered as your brother saying to you: "If you look after mother, I won't." That's really what they're saying.



The Vice-Chairman: May I interrupt? We had some discussions, and it seems that we will probably complete our questioning by the end of the morning session. It has been suggested with the co-operation of the GO people that we might get a little bus and take a tour of Union Station, some of the yards and some other areas from two to four this afternoon, if the committee members are interested. I would like to ask those who are here how many would be interested in taking a tour this afternoon, because it seems we will not have any more questions this afternoon.

Interjection: Yes, I think it would be worth doing.

Mr. Epp: I would suggest we do that later on.

The Vice-Chairman: Later on. You mean not today? Some other day?

Mr. Epp: Not today, but on another date. A number of people aren't here and--

Mr. Breaugh: That's the only problem. A number of committee members didn't make it in this morning.

The Vice-Chairman: Yes. The suggestion was made and GO can do it, but I wanted to know now whether or not GO should make the arrangements. It seems to me that we should do it at some other time, that is, some time in February or March or some time later on when we have a full committee.

Mr. Epp: Don't forget we also wanted to combine this with a visit to the Ontario Police College. We couldn't do it all in the same day, but we could do it all within two or three days.

The Vice-Chairman: At some other time later on in the year. Is that acceptable?

Mr. Robinson: Oh, sure. I just thought we might make use of the time.

The Vice-Chairman: Okay. So we appreciate the offer and the suggestion that you can accommodate us. If you can make some arrangements, maybe we can take all day and you can give us a good tour of your facilities in the area.

Mr. Parsons: We would be happy to.

The Vice-Chairman: Good. Thanks so much.

Are you through?

Mr. Breaugh: I just have one further thing. How is that experiment in Jim Snow's riding going, where you get a free bus ride to GO?

Mr. Parsons: This is the one I just explained--fare integration.

Mr. Breaugh: That isn't what it was touted to be.

Mr. Parsons: I think some people might have described it differently--

Mr. Breaugh: Yes. Like the minister.

Mr. Parsons: --but that really is what it is. Actually, it was commenced in Brampton prior to Oakville. I do not know why Brampton was first. It was a roaring success in Brampton, and Oakville was encouraged by the success in Brampton to take advantage of the offer by Ontario to cause this fare integration policy to come into being.

Mr. Epp: It is called the Billy-car.

Mr. Parsons: I am not sure what it is called up there.

Mr. Charlton: Is it reasonably successful in Mississauga as well?

Mr. Parsons: Mississauga has not been as co-operative, or co-operative in the same fashion as Brampton and Oakville. Mississauga said, "We will be happy to enter into an arrangement with you where we will have fare integration, but we want 75 per cent of what we would get if the passenger was a fare-paying passenger on our system."

At the moment we contribute 75 per cent of the cost of what Oakville loses by their people riding free on the bus to get to our train. We write them a cheque once a month for 75 per cent of the fare they would have got had the person been a fare-paying passenger. Mississauga said, "We want 100 per cent."

What happens in Mississauga is that if you buy a pass from, say, Meadowvale to Toronto, to ride the GO Train, for an extra \$6 you get to ride their bus free. We remit the 75 per cent that we pay, as in Brampton and Oakville, plus the \$6 that the passenger pays. Therefore Mississauga gets 100 per cent of the fare that it would have had if the passenger had been a normal fare-paying passenger. We tried to talk Mississauga into going for the 75 per cent arrangement because of the evidence in Oakville and Brampton that their increased ridership would more than reward them in the fare box with our 75 per cent contribution.

Mr. Breaugh: Can you explain, just as a final piece of business here, after you receive this report from CN, what will the process be that decides when and if you put a GO rail service out to Oshawa?

Mr. Parsons: Depending on what the report says and what the financial implications are, I think the Minister of Transportation and Communications would likely make a recommendation to cabinet that action be taken. You know that there are two ways of taking action.

Mr. Breaugh: Yes.

Mr. Parsons: It will be very much in the ball park of the minister.



Mr. Breaugh: So it is essentially the minister's decision if the CN says that it is possible, and it strikes me they would have a difficult time mounting an argument, aside from the fact that they will probably try to bleed you to death for money. After that point, once feasibility is established, it is essentially a decision of the minister.

Mr. Parsons: Yes, and for Management Board to provide the money.

Mr. Breaugh: There are not a whole lot of technical problems or anything else.

Mr. Parsons: The technical problems can all be solved by throwing money at them.

Mr. Breaugh: Are you basically satisfied that studies done by the region to establish ridership potential indicate that that part of it is fairly secure?

Mr. Parsons: The last figures we saw showed that we would increase our ridership from 600 to 1,000 persons per day out of Oshawa. Are those figures right, Mr. Leach?

Mr. Leach: The ridership projections by the region are about 6,000 a day. We feel that is pretty optimistic. The MTC projections are for about 1,000 new riders a day. The balance of the riders are probably passengers we already have who are driving to Pickering or taking the buses.

Mr. Breaugh: Part of the difficulty is that the economics keeps changing. People who now commute by car from the Durham region to, say, Scarborough or downtown Toronto, are rapidly having the cost of getting to work double and sometimes triple. So economics is really going to play a large role in people's lives. It is getting quite dramatic. The cost of commuting back and forth to Toronto used to be not very high, and now a substantial chunk of your paycheque goes into just getting to and from work.

The urgency of extending that rail service is getting a higher profile each and every day, and every time the federal government jacks up the price of oil and gasoline, it gets more dramatic. We may not even be talking options. We may be saying that six months or a year from now, if we do not get some kind of commuter service like that rail service, there really is no way to live in the Durham region and work in Toronto.

11:30 a.m.

Part of our problem is not really of our own making because Ontario in the mid-1970s really put a heavy campaign together to put low-cost housing in the Durham region, followed by a heavy promotional campaign to get people who were working in Toronto out to the Durham region. We are now caught in that bind. The economics are getting rather dramatic for a number of people who are just ordinary blue-collar workers and who are going to have a hell of a time a year from now getting to a job--if they have a job.

Mr. Parsons: I agree with what you say.

Mr. Robinson: I want to go back to my question on the fare differential, the numbers you came up with on that.

Mr. Parsons: Yes, I have the answer. If we were to set out to achieve our 65-35 mandate, it would involve an instant increase on the Pickering to Toronto ride, which you cited, of 30 per cent, plus or minus.

Mr. Robinson: What is that in dollars?

Mr. Parsons: The single fare is now \$2.05. It would go up to \$2.70.

Mr. Robinson: From \$2.05 to \$2.70?

Mr. Parsons: Right, and you would multiply that by 40 if you were talking about a monthly ticket and apply the discount that we give for a monthly rider.

Mr. Robinson: Do you think that would have any significant effect on your ridership?

Mr. Parsons: It would have a disastrous effect, I would think. I do not think that it would be palatable to instantly increase fares by 30 per cent on any transit property.

Mr. Robinson: Can we step back just for a moment into the previous area. Before CN had done it to you with their new contract, were you operating at 65 per cent?

Mr. Parsons: No. We were getting close to 60 per cent at that time, and it dropped us back into the mid-40s, I would think.

Mr. Robinson: To make sure we understand this, you were running close to 60 prior to CN taking a much greater chunk of your revenues, arbitrarily?

Mr. Parsons: Yes.

Mr. Robinson: When that first came in, the impact of that took you down into the 40s by way of recovery rate?

Mr. Parsons: Sixty to 64 down to about 48.

Mr. Robinson: Over the four-year term of the contract to this point, you have been able to build that back up again.

Mr. Parsons: We work very hard at it, but every time there is a fuel price increase, we get socked right in the nose. And every time there is a wage settlement increase, it is a pass-through to us of 100 per cent of all increased costs, plus overhead.

Mr. Robinson: What you are saying is the situation appears to be, in a very integral way, that at this time CN, the federal government's railway, controls the viability of GO transit in Ontario?



Mr. Parsons: It certainly controls the fares we have to charge. "Control" is not the right word.

Mr. Robinson: Influences the impacts.

Mr. Parsons: Influences, yes.

Mr. Charlton: What level are we at now?

Mr. Parsons: We are running at 51 per cent today.

The Vice-Chairman: There is a recovery of 51 per cent?

Mr. Parsons: Yes.

Mr. Robinson: If I could conclude that thought, Mr. Chairman, the government of Ontario then is being forced to subsidize at a greater ratio to maintain the viability of GO Transit in order to satisfy both the profit and the contract requirements of Canadian National?

Mr. Parsons: I think that would be an unassailable conclusion.

The Vice-Chairman: Could you indicate two things? You talked about your passenger load and increases. What is the absolute number of passengers per day that you carry?

Mr. Parsons: We are carrying about 80,000 passengers per day, 50,000 by rail and 30,000 by bus.

The Vice-Chairman: Is that trips or passengers?

Mr. Parsons: That is passengers.

The Vice-Chairman: If they go in the morning and come back at night, you have really 100,000 trips on the trains because you have 50,000 in the morning--

Mr. Parsons: No, that is total. When I say 75,000-80,000 passengers a day, that means 40,000 riding twice.

The Vice-Chairman: What is your approximate subsidy per passenger?

Mr. Parsons: Our subsidy per passenger is \$1.25. We are carrying 20 million passengers a year, and we have a subsidy from the province of just in excess of \$30 million.

The Vice-Chairman: Looking ahead 10, 15 or 20 years, how many passengers are you going to be carrying in the year 2000? Have you got any rough projections along that line?

Mr. Parsons: Our projections at this time only go out as far as 1985-86. We predict that where we are carrying in the year 1981 22 million passengers; in 1986 we will be carrying 30 million passengers. It is a substantial increase.

The Vice-Chairman: Mr. Edighoffer, did you have a question?

Mr. Edighoffer: I was mainly interested in the parking, and I think that was covered. I just wondered, also, what is taking place on types of vehicles using other types of fuel. Are you looking at anything like that?

Mr. Parsons: In so far as energy goes, we are looking under the BILD program at the electrification of the Lakeshore line. Consultants have made submissions, which are being reviewed now, for a major study of electrifying that Lakeshore line from Pickering to Oakville, and possibly from Oshawa to Burlington as time goes on, to see what the cost benefit might be and what else might dictate that electrification would be the proper way to go.

Studies are also going on regarding hydrogen fuel, but they are certainly in their infancy right now.

Mr. Edighoffer: Nothing on propane?

Mr. Parsons: Nothing on propane. We are not running any buses on propane. They are running on diesel fuel exclusively.

The Vice-Chairman: We have no further questions from the committee members, Mr. Parsons. Thank you for your appearance this morning, for your film, which gave us a good indication of where you are at, and for your forthright answers to our questions. Our researcher may have some more questions of you and your staff as we write our report. I am sure you will again be most co-operative.

Mr. Parsons: I would be most pleased to arrange a tour of the facilities for a full day or a half day or whatever time you might be able to spare.

The Vice-Chairman: Our clerk will be in touch with you or your staff to arrange that.

Mr. Robinson: Just before they go, I have a couple of brief questions dealing with remuneration of the board itself, which consists of seven members, six of whom are municipal regional chairmen, and one chairman, yourself. How does the salary ratio of \$5,000 per annum, plus \$125 per diem up to 100 days, reflect the work load you carry as chairman?

Mr. Parsons: It is fairly close to the work load that is required. In the first year of that new arrangement, and the arrangement was only brought into being some 18 months ago, the days somewhat exceeded the provision in there but not enough to complain about.

Mr. Robinson: I see. So it is equitable at this time.

Mr. Parsons: Yes.

Mr. Robinson: Do you find it would be necessary or desirable for you to change the infrastructure of that to provide you with some sort of backup who was not a municipal regional chairman?



Mr. Parsons: No. The advantage of having the regional chairman on the board I think far outweighs the requirement we might have for any additional hands. As I pointed out to Mr. Breaugh, we have Mr. Herrema, the chairman of his region. He is at our table once a month and telling us it is important to get on with the extension to Oshawa. It is the same with the member for Peel, who has Peel problems, and for Mrs. Jones from Hamilton. She sits at the table. She knows what her council is thinking and she echoes its feelings when she comes to our board. I can't think of a better way of having established the board, and I was on the board from day one when it was created in 1974.

Mr. Robinson: Your establishment strength is 483. At least, what you are carrying is 483, which includes 125 part-time employees. Who are those 125 people?

Mr. Parsons: They are ticket takers. As you might imagine, we have heavy demands at certain hours of the day. They are involved in the fare collection system.

Mr. Robinson: Are they drawn from the local community, by and large?

Mr. Parsons: Yes, they are. At Union Station, if you were to tour it at rush hour--and I might suggest, Mr. Chairman, we should hit Union station at one of the rush hours when we have our tour, either in the morning or the evening so that you can see the carryings we have down there--you might notice a lot of people who look like college students who spend some time with us in the morning and the evening in the fare collection process.

Mr. Robinson: What are the rest of the full-time employees then? Do they basically fall into full-time workers in the station facilities?

Mr. Parsons: Yes, they do. On the Lakeshore line, where we have full-day service, you will see people who work their eight-hour shifts. In a situation where we have only limited service--Milton, Georgetown and Richmond Hill--those people come in and work two or three hours in the morning and two or three hours at night.

Mr. Robinson: What is their employee status? Are they members of the civil service or are they exclusively employees of GO Transit?

Mr. Parsons: They are crown employees.

Mr. Robinson: Employees of a crown corporation.

Mr. Parsons: Yes.

Mr. Robinson: Sorry to have delayed you.

Mr. Parsons: We are relatively strike-proof except for the fact that the railways and the bus drivers, of course, do have the right to strike and they can cause our system to shut down if they want.

The Vice-Chairman: For that brief afterthought, thank you once again for attending.

Would the committee members stay for a few more minutes. Mr. Eichmanis wants to say something about tomorrow's meeting with the Ontario Energy Board.

The sitting continued in camera at 11:41 a.m.



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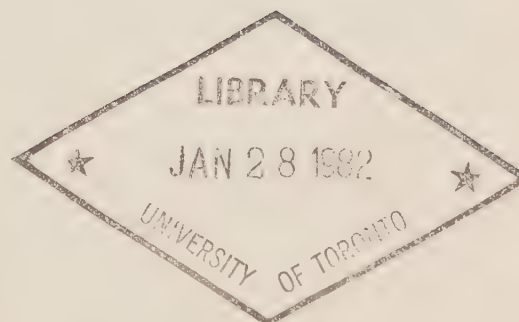
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STANDING COMMITTEE ON PROCEDURAL AFFAIRS

AGENCY REVIEW: ONTARIO ENERGY BOARD

THURSDAY, JANUARY 14, 1982



## STANDING COMMITTEE ON PROCEDURAL AFFAIRS

CHAIRMAN: Kerr, G. A. (Burlington South PC)

VICE-CHAIRMAN: Rotenberg, D. (Wilson Heights PC)

Breaugh, M. J. (Oshawa NDP)

Charlton, B. A. (Hamilton Mountain NDP)

Edighoffer, H. A. (Perth L)

Epp, H. A. (Waterloo North L)

Hodgson, W. (York North PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Robinson, A. M. (Scarborough-Ellesmere PC)

Taylor, G. W. (Simcoe Centre PC)

Watson, A. N. (Chatham-Kent PC)

Clerk: Forsyth, S.

Assistant to the Clerk: Carrozza, F.

Research Officer: Eichmanis, J.

From the Ministry of Energy:

Clendining, R. H., Chairman, Ontario Energy Board

Cochran, D., Special Projects Adviser, Ontario Energy Board

Cook, O., Energy Returns Officer, Ontario Energy Board

Cunningham, P., Administrative Adviser, Ontario Energy Board

Treadgold, D., Member, Ontario Energy Board



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON PROCEDURAL AFFAIRS

Thursday, January 14, 1982

The committee met at 10:21 a.m. in room No. 228.

AGENCY REVIEW: ONTARIO ENERGY BOARD

Mr. Chairman: Gentlemen, I see a quorum. We have here a representative of the Ontario Energy Board, Mr. R. H. Clendining, who is the chairman.

Do you have any kind of presentation, sir, or would you like to make some background comments off the cuff? How would you like to proceed?

Mr. Clendining: I'm at your disposal, Mr. Chairman. Having read this excellent report by your research officer, Mr. Eichmanis, I felt that if everyone has had an opportunity to review this I might perhaps amplify a couple of points. Otherwise I didn't have any formal opening statement or presentation to pass out. I would, however, like to make a few comments.

Mr. Chairman: I would think so. We were hoping, of course, that as a result of the submission by the staff maybe you would have a written comment dealing with some of the points raised by staff. But go ahead and make some comments, if you would like.

Mr. Clendining: Very well, sir. First, is it in order to smoke?

Mr. Chairman: Yes, it certainly is.

Mr. McLean: I hope you have lots of tobacco. I'm pretty nearly out of it.

Mr. Clendining: I'll put it there.

Before I commence my remarks, the Ontario Energy Board conducts all its matters through public hearings in a very court-like manner, to use the phrase of the report, and one of the things that is not permitted is smoking during the proceedings. So it's a pleasure to be able to do so here.

I'm Bob Clendining and I'm chairman of the Ontario Energy Board. I think it may be redundant, but in order to be perfectly clear, I would like to emphasize that it is the Ontario Energy Board as distinct from the Ontario Energy Corporation. I assume there is no misunderstanding, but let me stress it. I am not Malcolm Rowan.

Mr. Chairman: You ain't got no new oil companies recently.

Mr. Clendining: We are not involved in Suncor and things of that sort.

Mr. Epp: You're lucky.

Mr. Clendining: The Ontario Energy Board is a quasi-judicial regulatory board that regulates the natural gas distribution companies in Ontario, specifically Consumers' Gas, Northern and Central Gas, Union Gas and two or three smaller gas distributors in the province.

In a general way, our responsibility is to approve or disapprove any rate changes they may suggest. I guess the bottom line is to control--"limit" might be a better word--the companies' revenues in such a way that they can operate economically and viably, provide service to the communities they are authorized to serve, yet at the same time not make unreasonable profits. Ultimately, it is to set the rates that the gas companies can charge their customers throughout Ontario, which again takes into account the factors I have mentioned with regard to making sure the company can provide the service, but at the same time being sure that those rates are, to the best of our ability, just and reasonable to the customers who must pay the rates.

I am just trying to give a quick overview, Mr. Chairman. I didn't plan to go into a great amount of detail.

Mr. Chairman: Right.

Mr. Clendining: We do have other matters under our jurisdiction, such as the approval of pipeline construction within the province by the gas companies we regulate, and we have responsibilities that relate to those approvals. We do have an involvement in Ontario Hydro, which differs in substance from our involvement in the gas companies. In the case of the gas companies, when the board, following a public hearing, issues its decision and finally its order, it is that simple: it is an order to the companies to set their rates as the board decides; it has, you might say, the effect of law, subject to appeals, of course.

But in the case of Ontario Hydro our role is advisory. We conduct a hearing annually; we look at the Ontario Hydro financial situation. We are asked to comment on their proposed rate levels at the wholesale level, that is, the price they charge to the electric distribution systems at the municipal level and to a few commercial customers, which we do annually; and we advise the government and Ontario Hydro by Labour Day each year of our views on the proposals by Hydro. We say we like them or we don't like them and we think certain things should be looked into and so on. But it is an advisory report; we do not order Ontario Hydro to do anything in the same manner as we do with the gas companies.

I think that, very briefly, recaps the board's functions, Mr. Chairman. I understood that copies of our annual report had been made available to the committee, and perhaps it would be of greater convenience if we handled things in discussion and questions.

May I deal with one matter, though, that is not in Mr. Eichmanis's report and is not normally in the annual report that the board issues? I think it may help; it certainly interests me when I look at the responsibilities of the Ontario Energy Board in



the total scheme of things in the province. In a recent year, 1980 or 1981, natural gas sales in the province by just the big three--Consumers', Northern and Central, and Union, which take up well over 95 per cent of the sales, totalled something on the order of--and I am just trying to give you a perspective--\$2.2 billion. In other words, that is what their revenues are; those are the things we are controlling--regulating; I don't like "controlling." We are regulating.

Of that \$2.2 billion approximately, \$1.8 billion was involved purely in those three gas companies buying gas from western Canada and paying the price and the excise taxes, which are set by the federal government. I'm not being political when I say that; it's a fact of life. The federal government sets the price of gas as it enters Ontario, and the Ontario distributors must pay it. Similarly, there are excise taxes, which the federal government levies, and the gas companies must pay them.

I might inject that while we allow these wholesale cost increases to go through to the customers ultimately, we never do it without a public hearing and an examination of the company's financial position in case they can afford to absorb some of it.

At any rate, to come back to perspective--\$2.2 billion worth--the actual cost of doing business, which is not the phrase we use in our public hearings but is one I understand readily, is about \$400 million, and we control that directly. It's not a flow-through from the cost of gas set by an outside government; that is right in Ontario, \$400 million a year. I'm only mentioning these figures to say that we do have a lot of money to handle. I'm not blowing our horn; I'm just saying that it's interesting to realize the extent to which we get involved in Ontario.

In Ontario there are approximately 1.25 million natural gas customers. Of those 1.25 million customers--that means connections where there is a meter and a bill issued, if you wish--approximately one million are residential. That, to me, is very significant because every residential connection represents a few people, and it also represents the people who are obviously paying a lot of the money I have just touched on. It's a very large number of people.

10:30 a.m.

In the past calendar year, 1981, through the hearing process, which I'll comment on in a moment, the Ontario Energy Board allowed increases of something in the order of \$370 million in total. Immediately, I would like to interject that about \$298 million to \$300 million of that, which is, I believe, around 80 per cent, was due to the federal government's increase of the cost of gas entering Ontario and/or excise taxes, which have been added to gas in the last year or two. The remaining \$74 million was again attributable to the cost of doing business--what we call revenue deficiency--where the company needs more money to stay in business and provide the service it has been authorized to do. Again, those are just numbers for perspective.

Mr. Chairman: What happens in a situation where there is a company like Union Gas, for example, or any other company, which, possibly because of some long-term planning or anticipation, finds that it is in a situation where its costs go up substantially? Do you allow that to be passed on to their customers or do they have to absorb part of that? I realize that you don't want the company to go out of business; you want it to remain solvent. It may be in a temporary bind because of certain corporate decisions that were made and turned out to be rather sour. What do you do about a situation like that?

Mr. Clendining: A quick answer--and I don't want to sound fatuous--would be to hold a hearing to consider all sides of the problem, if that's a true answer. This sounds like a cop-out, but without knowing the factors that went into the decisions that caused the company to require the increased surge of income, I couldn't say we would do this or do that.

Clearly, if, in the judgement of the panel that is assigned to hear the case, which is mentioned in Mr. Eichmanis's report, the management decisions were considered to be good or reasonably good decisions, and if the long-term interests of the company seemed to be served by it, then the board would probably grant some sort of rate increase to increase their revenues. It's a little hypothetical, but I'm trying to be helpful. Am I answering your question?

Mr. Chairman: I happen to have a neighbour who is a great fan--well, he has been connected with Ontario Hydro for years, and of course he heats his home with hydro. I heat my home with gas, and as we walk our hounds around the block each night he says, "You know, in just a matter of a few months your rates are going to be higher than mine." So I'm getting a little worried; that's all.

Mr. McLean: Try to get rid of the hounds.

Mr. Clendining: If you are looking for advice, sir, I think that was probably the best advice.

Mr. Epp: I'll come back to this point a little later.

Mr. Clendining, you are the chairman of the board.

Mr. Clendining: Yes, sir.

Mr. Epp: How long have you been a member of the board?

Mr. Clendining: I have been a member since March 1978, and I have been chairman since April 1978, nearly four years.

Mr. Epp: I notice in Mr. Eichmanis's report that the government tries to appoint people who have energy-related experience. What is your background?

Mr. Clendining: Before being appointed to the energy board, I worked with the Ministry of Energy from 1974 to 1978--I guess that's four-and-a-half years--as oil and gas adviser to the



deputy and to the then ministers--there were a number of Ministers of Energy at that time--during the Alberta federal negotiation days, which was, in my view, a very interesting insight and learning experience in terms of how government operates.

Prior to that, for 25 years--actually 25 years less two months because I did not get my gold watch--I worked in the oil industry. I guess about 18 of those 25 years were in Alberta on different occasions, and the balance of those years was in the head office of a major oil company in Toronto. My work in the oil industry was international supply and national supply in terms of oil and gas and competing fuels. That is sort of an overall background, if you wish, as opposed to being a refinery engineer or some more specific person. I was involved in the management of the oil company system in Canada.

Mr. Epp: This is a full-time job for you as chairman of the energy board?

Mr. Clendining: Yes, sir, it is a full-time job.

Mr. Epp: And there are a number of other members who are full-time on that board?

Mr. Clendining: Yes, there are in total nine, including myself. There are eight other members, two of whom are part-time. The part-time members are working, not full-time, but whenever I can get them. For the other members it is a full-time job and they are fully occupied.

Mr. Epp: What is the geographical representation of the members, generally speaking? Are they all from Toronto or are they scattered around the province?

Mr. Clendining: That is a question I will have to check. They live in Toronto at this point. Do you mean their origin?

Mr. Epp: At the time of appointment.

Mr. Clendining: I can think of some. May I just ad lib an answer?

Mr. Epp: Certainly.

Mr. Clendining: I know them personally, just without referring to notes. The vice-chairman, Ian MacNabb, while he is living in Toronto at this time, his background, his ethnic origin. was in the Ottawa Valley region. Stephanie Wychowanec is another and more recent vice-chairman. I think her background was in Toronto. She was a lawyer and worked in government.

Mr. Treadgold, who is with me as an adviser on a multitude of things, is a QC and an eminent lawyer. I am afraid I am going to have to turn and ask him, "Where did you come from, Don?" He has been in Toronto all the time I have known him.

Mr. Treadgold: Born and bred.

Mr. Clendining: Very well, thank you. Harvey Chatterson, who is a board member, came from Winnipeg and prior to that--this is not your question--he had experience in other areas. He is from Manitoba where he had some experience which was pertinent to the board.

We have John Dunn who was formerly with North York Hydro. I think his roots go into the Toronto area, but I could not say. He was not brought in from some remote city at the time of his appointment. Where he came from before that, I do not know. Don Thornton has been in Toronto for 20 years, so I suppose you would say he was from Toronto, although he was brought up in southwestern Ontario.

John Butler was a full-time member and has recently become a part-time member. His background is England, but latterly various parts of Ontario, where he was working as an engineer, a consulting type of person, and he now lives in Burlington. Last but not least is Richard Perdue, who is a lawyer, a part-time member. I believe his origin was the London area but he is in Toronto now. I can dig further into that, but that is just what is in my head. Did I miss anyone?

Mr. Epp: Mr. Clendining, is there any effort being made to give some kind of regional representation on these boards or anything of that nature, rather than having all or most members from Toronto? I think that not only on this board, but because these boards are often located in Toronto and so forth and the government is located in Toronto, often the people from Toronto have a great advantage in being on these boards and commissions and so forth. I am just wondering about some effort being made to give people from other parts of the province a better opportunity to serve on these boards. It is not that they do not move into Toronto maybe when they become full-time members, but certainly their experience would also represent other parts of the province.

10:40 a.m.

Mr. Clendining: I have difficulty answering your question because, as the board members are appointed by the Lieutenant Governor in Council, I am just not privy to the method of selection. Honestly and semi-seriously, since we need board members so desperately, I just say, "Please get me a board member, sir," and in due course this happens. I cannot say whether this is a factor in the selection process. I am sorry, I just do not know.

Mr. Chairman: I think you have to have expertise in the energy field.

Mr. Clendining: Certainly. For that, thank you, sir. That is a must, the energy field or the legal field or something that relates to the hearing process and the whole operation, but about the geographic, I just do not know.

Mr. Epp: Your comments here refer to the McRuer report. I have not read that report. How old is that report?



Mr. Chairman: I believe it is about 10 or 12 years old. Was it 1970 or 1971 or in there?

Mr. Treadgold: About 1972.

Mr. Epp: It is about 10 years old.

Mr. Clendining: Thank you, Mr. Treadgold. Yes.

Mr. Epp: Is there any conscious effort being made to implement most, if not all, of those recommendations of the McRuer report? I admit I have not read the report, so I cannot speak to it. My particular concern is that often these reports are drawn up, recommendations are made, and that is the end of the report. I am just wondering to what extent the energy board is making efforts to implement those various recommendations which were in it. For instance, I notice that, depending on the situation, reference can be made either to the Minister of Energy or the Minister of Natural Resources. Are there any efforts being made to concentrate responsibility maybe to only one minister and only refer to one minister rather than two ministers?

Mr. Clendining: That is reference from the Minister of Energy and from the Minister of Natural Resources. The references come from those two ministers in two different fields. I guess the short answer is I have not made any effort to bring them together, but if I could explain, I do not think it is necessary.

The references from the Minister of Energy would be in the energy field simply, hydro being one, as an example. The references mean, "Here is a situation. Please hold a hearing and give us your advice." That is what the reference does. From the Minister of Natural Resources it is in the area of gas well and oil well drilling and gas reservoirs, which are matters which the petroleum resources section of Natural Resources deals with. So the two references are in areas where each minister is operating separately. Is that helping with your question?

Mr. Epp: It is helping a little. It seems to me that when you have more than one ministry which can refer things to a particular board, it complicates matters.

Mr. Clendining: Yes, it could. The references from the Minister of Natural Resources are infrequent--at least in my experience and from my knowledge of the board's experience--and usually of very short duration. They are not a major factor in our day-to-day operation.

Mr. Epp: So the major ones come from the Minister of Energy.

Mr. Clendining: Very definitely, yes.

Mr. Epp: Let me get back to a point Mr. Kerr raised earlier that has to do with hearings. Union Gas or Consumers' Gas or whoever comes before you. The city of Kitchener also comes before you. I guess the city would be part of that five per cent because it buys its own gas and distribute it. Is that correct?

Mr. Clendining: The cities of Kingston and Kitchener buy their own gas and distribute it. We don't regulate either of those distribution systems. They buy their gas and distribute it within their cities and municipalities and set their own rates.

Mr. Epp: They set their own rates and they don't come before the board or anything of that nature?

Mr. Clendining: Yes, sir.

Mr. Epp: When the other companies come before the board, to what extent do you--through your staff of 26, I think--check their figures and determine that the information they are giving you is accurate?

Mr. Clendining: The staff does an exhaustive review of the information filed. I say that sincerely. They go back to the company with further questions or requests for further information. We call them interrogatories because, once their application is in, the hearing process starts to shape up and we become formal. We file interrogatories with the companies and obtain further information if necessary and the staff reviews the numbers with great care. Keep in mind that ultimately it is all reviewed in a public hearing where other people, outside of board staff, have an opportunity also to examine the material that has been filed by the company. In answer to your question, we do a great deal of review before the hearing starts.

Mr. Epp: Is there ever any problem with the co-operation extended by the various companies to your board with supplying you with the kind of information that you require for your decision?

Mr. Clendining: I am not aware of there ever having been any refusal. There may be resistance on an odd occasion, but we have never failed to obtain the information we felt would be required, even if after getting it, as you can understand, we may get information and say, "Now that I have the whole story, perhaps I didn't need that piece of information." The fact is we have always obtained what we required. Because I want to tell you the whole truth, I just want to call on Mr. Orville Cook, who is the energy returns officer and director of operations and manager of financial analysis for the board. He wears three hats, but I am not here to say we need more people; that's a separate forum on a separate day. Orville is a professional and I want to make sure my answer was adequate. Mr. Cook, do you have anything to add?

Mr. Cook: The answer our chairman has given is substantially correct. However, there have been occasions when the the energy board staff will seek information from the utility and the utility regards that information as confidential. In that case, the matter is taken up with the board at the hearing and the board will make a ruling as to whether or not that information will need to be produced or not. In my memory all of that information has been dealt with in a way that is sufficient to the regulatory process and has worked out quite satisfactorily in terms of availing the board of the information it needs to make a decision in the case.



Mr. Epp: Did you ever at any time have to resort to exercising your quasi-judicial powers of subpoenaing information from these companies?

Mr. Cook: No. We have never had to go that far.

Mr. Epp: But you have that power?

Mr. Cook: Yes, we do.

Mr. Epp: With respect to costs, you have a \$1.2-billion budget, and the chairman explained earlier about how that is made up.

10:50 a.m.

Mr. Clendining: You said \$1.2 billion?

Mr. Epp: Pardon me. It was \$2 billion.

Mr. Clendining: It's very important, and if I wasn't clear--

Mr. Epp: I didn't write down the figure.

Mr. Clendining: I was speaking of the revenue from gas sales by the three largest gas companies in the province. So \$2.2 billion worth of natural gas was sold. Our budget, if that is what you are speaking of, Mr. Epp, is not that high. It is about \$1.5 million.

Mr. Epp: There is a slight discrepancy there. Now I have lost the point I wanted to make. Do the utility companies end up paying the cost of the board itself? Where do you get most of your revenues from? In other words, since you are exercising a service and a certain amount of control over the utility commissions, I am wondering to what extent the taxpayer is paying a certain amount in there.

Mr. Clendining: In simple terms, I will give you some specifics. We do assess costs for hearings, which bring us a revenue which has varied from a third to a half of our total budget. The rest of the answer is that the balance comes from the general government funds.

Mr. Epp: Has there been any discussions to try to get the utilities to pay, since they are the ones benefiting by the hearings I would think? They are the ones who request the hearings. Is any attempt being made to get the utilities to pay the full extent of the cost of those hearings?

Mr. Clendining: It is something we have discussed with Management Board. When we are speaking of the cost of hearings, we think we recover the cost of hearings, but the hearings are only a piece of our total bill. Do you mean to have the gas companies, in effect, reimburse us for our total expenditures?

Mr. Epp: Yes.

Mr. Clendining: We have considered it, and I understand it's a matter of normal government policy that every agency should be self-supporting, at least to the extent possible, and should not be on the taxpayers. The reason we are not recovering all of our costs has been reviewed, and what we have so far received the approval of Management Board, among others, was that if the gas companies pay our full costs, those costs will ultimately find their way through to the gas customers as part of the cost of their doing business and they will show up, admittedly in a very small way, in the total gas bill, but none the less would flow out to just the gas customers.

The philosophy, the feeling, was that this was, in effect, a tax on the gas user and should be more generally distributed to the taxpayers. It's a political and philosophical decision that I refer to people in that field, but that is the rationale by which we have so far not been recovering our full costs.

I would be--I think my colleagues would agree--quite comfortable with collecting the full costs, given the authority, in view of my concern about this perceived tax on the user and, quite honestly, I have a concern about keeping the Ontario Energy Board seen as being pure and independent of government. I do not mean independent in a defiant way. I mean completely impartial, unbiased, like a court really.

You did not ask me this question, but you struck a nerve. If I may just add a personal suggestion, if we did operate in a financially independent way--I do not mean that against the rules of government; I mean in terms of being self-sustaining--I think it would do something to add to the perceived independence of the board vis-a-vis the Minister of Energy or Minister of Natural Resources or the cabinet and Legislature at large. It might also give us an opportunity in some cases to adjust our salary schedules in certain cases so that we could compete with industry for certain experts that we wish we had the authority to hire.

You did not ask me those things, sir, and forgive me for taking advantage of your question.

Mr. Epp: I appreciate your comments Mr. Clendining, and I am sure the members of this committee appreciate that, because it is my feeling that the board should be self-sustaining. In the revenues that the gas companies get, which are substantial, and I also recognize that they have a good balance sheet at the end, it would be, as you say, infinitesimal. Now the hydro users are helping to pay for those hearings because they are not using gas, et cetera. I would see nothing wrong with the board being self-sustaining and getting that extra revenue through hearing charges from the various gas companies.

Mr. Clendining: Interestingly enough, this is an annual matter. It comes up in the spring each year and comes forward on my desk and I have to raise it with Management Board and the minister, and I will be doing so in the next couple of months.

Mr. Epp: Is that a decision that is made by the board or is that a decision that is made by the government? If the board was



to say, "We are going to charge rates that more or less make us self-sustaining," you are autonomous enough to make that decision. Is that not correct?

Mr. Clendining: I think so.

Mr. Epp: Or do you have to have the approval of the minister?

Mr. Clendining: No, I do not think so. We would have the authority to do that. I think there are some things that really do not relate to the regulatory role where you sort of say, "What is government policy?" because we are a government agency and we certainly relate to Management Board and they watch us in terms of our expenditures and our staffing. It through Management Board that I have had this exemption, if you wish, from government policy which normally says get all your expenditures back.

I guess I am giving you two answers. Yes, I guess we could just say we are going to do it. Mr. Treadgold may contradict me on that. Mr. Treadgold is a board member and lawyer and my legal adviser and I have obviously erred.

Mr. Treadgold: My concern is I think it would require legislation to authorize us to charge the companies all of our board's expenditures. The act at the moment gives us power to assess the costs of any proceedings, but not all of our work is involved in a specific proceeding or rate hearings and things of that nature.

If we tried to assess costs of a hearing that clearly could be determined as having nothing to do with the hearing, I suspect someone could take us to court on it. In effect, to tax the industry for all our costs, I think would require legislative amendment.

Mr. Epp: And yet you are there for the industry.

Mr. Treadgold: That is arguable. You mentioned earlier that we are doing a service for the industry. You have to remember that the government says, "Industry, you will be regulated." That is the story.

11 a.m.

Mr. Epp: That is because they have a monopoly or an oligopolistic kind of situation. You do not see a Consumers' Gas line and a Union Gas line going down the same street competing with each other.

Mr. Treadgold: That is correct. That is the basis of the need for regulation. But I am not sure the industry would say that in all respects the board is doing a service for them. It is protecting, if you like, gas customers against the industry to a degree.

Mr. Watson: Mr. Epp said you are there for the benefit of the industry. Do you not feel you are there for the benefit of the public too?

Mr. Epp: Well, of course.

Mr. Clendining: Yes. We are the public defender. That is rather strong, but that one of our roles is to make certain that their rates are reasonable.

Mr. Chairman: In fact, your being there is a matter of robbing Peter to pay Paul. In any event, if the companies were required to maintain the operation of the Ontario Energy Board, that would be reflected in their rates.

Mr. Clendining: That is correct.

Mr. Epp: Let me get back to the McRuer report. I think McRuer was somewhat critical of the board with respect to the appeal process. When somebody appeals a decision of the board and the court then disagrees with the board's decision, as I understand it he is not in a situation where that then becomes mandatory and that particular decision has to be carried out. Is that correct?

Mr. Treadgold: That is related to the power of the board under section 32 to state a case to the Court of Appeal. Chief Justice McRuer said in his view there should be a provision that once the opinion of the Court of Appeal is given to the board, it should be bound to follow it. I would agree with that 100 per cent, and in practice we certainly do and would.

Mr. Epp: Is there some effort being made to write this into law? It seems somewhat contradictory that you can have an appeal hearing and yet that decision at the appeal level is not mandatory. Albeit, as you say, sir, the board has followed through with that--I appreciate your comments on that and I think the board is probably acting very wisely on that--it seems to me there should be some compulsion through legislation. Obviously, if you are going to appeal something, the latter decision has to be the final one up to that point, not that somebody can say, "Look, we will take the first decision because we do not like the second one." It seems to me that is a very important recommendation.

Mr. Treadgold: If the board did not accept the view of the Court of Appeal then obviously when the board went on and made its final decision the groundwork would be laid for an appeal from the decision to the court. From a practical standpoint, the board would be ill advised not to abide by the decision of the court. Again, I agree with you, there is no reason I can think of why we should not be required to comply.

Mr. Robinson: Supplementary: I notice in the researcher's report it is silent on the area of remuneration. I wonder if the chairman would be good enough to give us a rundown of how the money breaks out to the board members?

Mr. Chairman: What is supplementary about that?

Mr. Robinson: It's a supplementary dealing with Mr. Epp's question about the makeup of the board.

Mr. Chairman: Oh, I see.



Mr. Epp: Good question.

Mr. Robinson: I thought it was fair. If you can ask where they come from, I can ask them what they get.

Mr. Epp: If I may just interrupt for a minute, just for the guidance of the members, it would be helpful if you indicated the board members and where they come from and so forth.

Mr. Chairman: We can deal with the question of salary a little later on. I will add you to the list.

Mr. Robinson: Oh, very well. I certainly would not want to interrupt the natural flow, Mr. Chairman.

Mr. Chairman: Dealing with the appeal process that Mr. Epp raised, you have read Mr. Eichmanis' report. Mr. Treadgold could probably help on this. Did you notice on page 13 that where there is a situation where a question of law that happens to be raised during a hearing, any party, including the Lieutenant Governor in Council involved in the proceeding, can ask the Court of Appeal to give its opinion on the question of law? I suppose that is something that may take place during the hearing.

However, the board does not have to obey the Court of Appeal, which the McRuer report noted as being unsatisfactory. I think you said, Mr. Treadgold, that the board usually does.

Mr. Treadgold: To the best of my knowledge, it always has.

Mr. Chairman: Yes. It is amazing that it is not required to do that because, in the next paragraph, when the board issues an order and there is an appeal, you are bound by the court order. It seems ludicrous. It seems actually as though there is some sort of omission in the act, does it not?

Mr. Treadgold: I agree with that.

Mr. McLean: Mr. Chairman, the first question I have has bothered me for some years as head of a municipality. The occasion usually arose during joining a city or a large area that a certain gas company would want to put lines in the urban or rural municipality in a built-up area. The gas company would send a letter to council and ask for permission to do so. Then they would want a bylaw passed to approve of that.

I often wondered what powers a municipality has in dealing with things such as this. What would happen if they said: "No, we don't approve of it; we want a recommendation from the other gas company"? When the one gas company is allowed to go into this area and a bylaw is approved by council to do that, and the municipality gets nothing for doing this, what power has that gas company got or what power does the council give that gas company when it approves that bylaw?

Mr. Clendining: Were you asking if the municipality would have an opportunity to invite another gas company to offer the same service?

Mr. McLean: That is right.

Mr. Clendining: Taking the last question first, if there was another gas company with facilities adjacent, and there are some fringe areas of these distribution systems where the systems are such that either could be extended into a municipality--excuse me, I am doing this thinking of one company coming from here and another one coming from there--in those instances, either gas company could have the opportunity to serve that municipality. Clearly, if there was no other gas company in the area, that would be the only gas company that could offer the service. That is only part of your question.

Mr. McLean: The other part would be the bylaw they request the municipality to pass to allow them to go in there. Why is that necessary?

Mr. Clendining: Can I ask Mr. Treadgold to give you the legal interpretation?

Mr. Treadgold: Under the Municipal Franchises Act, a gas company cannot go in and serve in a municipality without two things: a franchise bylaw from the municipality and a certificate of our board. That does not apply if they were serving prior to 1933. Generally speaking, in a new area this is required. In the normal procedure, most of the gas companies now have a pretty standard form of bylaw and agreement. Under the act the approval of the terms and conditions of the bylaw and agreement of our board are required.

11:10 a.m.

Sometimes we have arguments between the council municipality and the gas company as to some specific terms. In that event, if it is a matter of a renewal, the board has the power to deal with it. The board cannot force a municipality at the outset to give a franchise to anyone. But the gas company, by the same token, cannot go in without a certificate. That is usually where the argument might occur as to which company should serve in a particular municipality.

Mr. McLean: Further to that then, could a municipality request a fee from the gas company in order to allow them to go in? Has that been the case in any area?

Mr. Treadgold: It has happened years ago. Our board takes the position that this is not a good thing because, in effect, it is a--

Mr. Chairman: Form of blackmail.

Mr. Treadgold: Well, there is that connotation, plus the fact that the municipality and its customers are not being treated in the same way as other customers of the same gas company. In effect, if you get a large fee, some of the gas company's profits are funnelled to that municipality, but not to all the other municipalities. So we try to keep everybody on the same keel. On occasion we have refused where there has been a suggestion of a fee that obviously is in the form of a tax. I think all the agreements provide for something like a \$100-dollar fee every time they open a



roadway. Of course, they are required to replace the roadway, that sort of thing, but nothing in the way of sharing in profits or taxation.

Mr. McLean: Thank you. You indicate in this report that any two members can decide a case. Is that binding and is this the way your board operates? Do you have a committee that does have the jurisdiction and the authority to determine a case on its own?

Mr. Clendining: Yes. The act provides that a quorum of the board is two members. The way we conduct hearings is I, as chairman, do it in consultation, but I have the ultimate authority to appoint a panel for a particular hearing. In the case of major hearings, which are rates hearings or certain other complex and lengthy hearings, I make it a practice of appointing three members to a panel for the simple reason that if one becomes ill, two can continue. If I appoint only two and one becomes ill, either the hearing is stopped or must start over again if this person cannot return. There is also the fact that three people can reach a decision more quickly than two people because you eliminate the deadlocks you can have with two.

Once I appoint a panel to hear a case, it is charged with hearing all the evidence, all the material, making its decision and then issuing written reasons for the decision. I do not discuss it with the panel; I do not tell them how I would like them to handle it. When you are getting into issues of natural justice, if I am not on the panel, I have no right to interfere with its decision. I think that is what you are referring to in your reference to two. I do not influence them once I have appointed them.

Mr. McLean: What part of your budget goes towards paying the consultants?

Mr. Clendining: I'd have to look it up for specifics but approximately, and I can get you more information, 15 per cent to 20 per cent. If that is suitable, I will let it stand or I can give you the specifics. It's all on public record anyway.

Mr. McLean: What part of the \$1 million goes in salaries. How much do the chairman, the vice-chairman and the board members get?

Mr. Clendining: You are speaking of personal salaries?

Mr. McLean: Yes.

Mr. Clendining: I am not even sure I have that with me. I should have. Do you have that, Mr. Cunningham, in your head?

Mr. McLean: You should know what the chairman is getting.

Mr. Clendining: I should know what the chairman is getting.

Mr. Treadgold: He hasn't told the members.

Mr. Clendining: My salary is \$59,000 something--maybe \$59,300. I am not sure of the hundreds but it is about that.

Mr. McLean: And what are the salaries of the full-time board members?

Mr. Clendining: The board members are in a range of \$45,000 to \$55,000.

Mr. McLean: And how do the part-time people get paid?

Mr. Clendining: Part-time members are paid straight per diem. They receive no other benefits of insurance and all these things.

Mr. McLean: And how much would that per diem be?

Mr. Clendining: It is \$275.

Mr. McLean: Per day or week?

Mr. Clendining: Per day.

Mr. Breaugh: I want off this committee.

Mr. Clendining: That is for a full day, sir.

Mr. McLean: No further questions.

Mr. Eichmanis: I just have one supplementary, Mr. Clendining, regarding a hearing decision. After you have set up a panel and it has finished with the hearing, do you, for example, like the Environmental Assessment Board, have the whole board discuss those proceedings with those panellists to enable them to come to some sort of decision? Do you rap by way of a bull session or what have you? "Here are the situations. This is a rather a ticklish point. How should we decide on that?" Then ultimately do the panel members or the chairman writes a report?

Mr. Clendining: No, sir. The panel makes its decision independent of the board, if that is your question, and independent of me. There are occasions when, because of the complexity of a report and three people being locked up in a room for weeks writing it to the point where they hate each other, they like someone outside of that group to read it through and make sure it makes sense or, to be more specific, that the logic for the reasons is well written. Other members will have an opportunity at the eleventh hour to read it through and say, "Hey, you left out a paragraph" or something. But the decisions, the guts of the issues, are not up for discussion.

Mr. Eichmanis: Although the full board may not hear or make the final decision, it is the panel that makes the final decision and the panel has the authority of the board. It is not as if there were only two or three people making the decision that somehow this is not the board's decision. I just want to make that clear. It is the board's decision.



Mr. Clendining: The panel decision, when issued, is the board's decision.

Mr. Rotenberg: It's like the OMB. It is the board for the purposes of that hearing.

Mr. Eichmanis: I just want to make that clear.

Mr. Clendining: Yes, they speak for the board.

Mr. Watson: I would like to deal with a couple of areas. One of them relates to the problems you have indicated here on the staffing you have and the time availability. Part of that, you have indicated earlier, is this sort of federal pass-through. It takes your time and it takes the time of the utilities to present a case and hear a case for that when, to the casual observer, the answer is known before it even appears. These seem to have been coming fairly frequently in the past. Do you have any suggestions for streamlining that and yet not giving the companies a free hand just to pass them through?

11:20 a.m.

Mr. Clendining: Yes, sir. The word "streamlining" is something that we use around the board because we are deeply involved in a program of streamlining--it is the word we use--the regulatory process. It is very cumbersome. It is very slow moving. There are a lot of dollars involved and we have a variety of programs that are being instituted to make it move faster. This, of course, is one thing that you say to a casual observer. It is obvious because to a cynic they would say, "Obviously, it is go to flow through."

We are recommending an amendment to the Ontario Energy Board Act which has the effect of giving the board the right to allow the pass-through of these federal gas cost increases to the customer without a hearing, which means that is one way of quickening that. Assuming this amendment is put forward and passed, in actual practice the board staff would examine quickly the material file.

First, it would make sure that the federal government increases alleged were, in fact, so, which is fairly obvious. Also, it would make certain there was no immediate evidence the company was making too much money, which recently has never been the case, but none the less, let us do a spot check and make sure they cannot absorb some of it. Assuming there is no reason they can absorb it. Then the board would have the right to say: "Okay, no hearing. It will pass through across the board," that is, all different categories would take the same increase.

That would end it, except that in the next full rates case, which may even be ongoing or may be scheduled for the future, this will become part of it to make sure that decision which was done a little more hastily was totally valid. There would be a check down the line anyway on it. I am giving you a long answer to a short question. We are proposing that we have the right to pass these through without a hearing, but we retain the right to have a hearing if we feel there is something not quite right.

Mr. Watson: Have you had consultants giving you advice on how to streamline the administration of your board?

Mr. Clendining: Yes, sir.

Mr. Watson: Have you received the report, or is it an ongoing report from the consultants?

Mr. Clendining: We have a report from the consultant. It was in the fall. We did a number of things in-house to streamline things. You did not ask me, so I will not tell you all the things we have done. We did a lot of things to quicken the process when we reached a stage where it was difficult to go any further without some outside help, keeping in mind that the board members are fully occupied and our staff people are working. That sounds like a commercial; I did not mean it that way.

There was no available manpower at the board to sit down with me, the chairman, and say, "How are we going to stick-handle our way through this?" So I finally hired a consulting firm to come and advise us. They filed a report with us last fall. It has been quite helpful.

Mr. Watson: Was the recommendation that you gave me on the federal pass-through part of their suggestion or was that your own or is it mutual agreement?

Mr. Clendining: No. It was something we had already recommended be included in the next amendment, if there was one, to the Ontario Energy Board Act. They also recommended it, I think, in their report after--I raised my eyebrow--I think I noted that this was already in progress because it was.

Mr. Watson: I am interested in the storage fields for natural gas and the rates that are allowed for storage. What process does the board go through in allowing payments for storage or setting the rates? Do you actually set the rates for storage? Maybe we should have that straight--the storage gas. You set the rates you can charge the customers. Do you also set the rates the farmer who owns land can charge the gas company?

Mr. Clendining: The first answer is yes. The second answer is no.

Mr. Rotenberg: You do not set the rates for the farmers which are charged against them?

Mr. Clendining: I would like my legal adviser to speak for me and also to caution me if I might be in an area we should not be discussing.

Mr. Treadgold: There are two aspects to the question. The board does fix the rates a storage company can charge for storing gas. Union Gas stores gas for Consumers' Gas and Union stores some gas, I think, for Northern and Central Gas. That is part of the rate structure and that is fixed by the board.



As far as what the farmer gets for his exploration and other rights is concerned, in the ordinary course that is subject to negotiation between the farmer and the gas company, or quite often not the gas company at that stage, as the exploration is quite often done by someone who is not selling gas. However, where there is a storage field that is designated and the company does not have the full rights from the land owner to store the gas there, then the board has jurisdiction to give a gas company the right to store gas in the area. If the payment is not agreed upon between the land owner and the storage company, the act requires that the person authorized to store the gas will make fair, just and equitable compensation. Failing agreement as to the amount of the compensation, the amount is determined by our board, that is, if there is no agreement.

At the moment, the board has its first major case on a question of payment to land owners. There are a large number of very technical questions involved in this case and I think it would be preferable that I make no further comment.

Mr. Watson: I am sort of aware of what is going on, so I do not want to embarrass you.

Mr. Clendining: It is a matter of public hearing at the moment and we prefer not to discuss it.

Mr. Watson: I am trying to stay outside of the details and go into what you have the authority to do. You have said you do have the ultimate authority. That decision will be yours. Is the decision on the size of the storage field yours? In other words, from the practical standpoint, the storage field is down there somewhere and is spread out down there. How far is it spread out? How many of the people on top qualify? It is down this concession and the next, and it is a nice square. I cannot visualize the storage in the ground as that square room with straight walls.

Mr. Treadgold: The board has the power to recommend to the cabinet the designation of an area as a gas storage area. The boundaries are then usually determined as a result of the board's report. The board holds a hearing first and determines in its view, as a result of the evidence, the appropriate boundaries of the area.

11:30 a.m.

The outer boundary is a problem because obviously you do not have a wall so that you can say, "This is the wall of the building and everything within that is the storage area." The board's practice over the years has been to provide a buffer zone, and the evidence indicates that gas will not go outside that area. It is a question sometimes of how big the buffer zone should be. Normally, there will have been drilling and the outside area will have been determined as a result of the dry holes that have been drilled in the outer area.

Mr. Watson: How do you police these storage areas? If I could use an example, through the best evidence you have, you draw the boundaries and it goes down concession eight or something as to

the outer limit of that storage. Somebody comes along and drills on the other side of the road and drills into the storage that is already there. A great find! How do you resolve those things? Is that a matter of courts or the energy board to resolve those differences? In other words, somebody goofed on which direction the storage went.

Mr. Clendining: There is a limitation on the distance from a designated gas storage area. There is a limit as to how close you can drill.

Mr. Watson: Is that your control or is that Natural Resources control?

Mr. Clendining: Petroleum resources are Natural Resources concern. They are the people in the field who are, to use your word, "policing." Any well that is drilled must be licensed and, where it is licensed by the Ministry of Natural Resources, there is a check done. That is out of our jurisdiction. I understand they do check.

Mr. Watson: I am interested in the tie-in between Natural Resources and you. How do you communicate? Do you communicate informally or formally? What is the process by which the decision you make is policed by them? Maybe that is oversimplifying it. You make the designation of where the storage is, the recommendation where it is. Is that decision only a recommendation to Natural Resources, the government in that case, and therefore their final decision and theirs to police?

Mr. Treadgold: The Lieutenant Governor in Council actually passes the order in council designating the storage area. The policing or what happens from then on is not really our board's. There are provisions that say, for example, "No person shall repressure, maintain pressure or flood any geological formation by the injection of oil, gas, et cetera, unless he holds a permit"--that does not apply to the person who is authorized to store in the storage area--"but the minister may refer to the board for a report any application for that sort of opinion, if in his opinion the circumstances so require, but he shall so refer it if the point of injection is within a mile of a designated storage area."

Sometimes you can get gas out by increasing pressure, as I understand it. That could be a method of trying to drain a storage area. It is petroleum resources.

Mr. Clendining: The bottom line is that it is petroleum resources and it is the Ministry of Natural Resources responsibility to police it. No well can be drilled without a permit.

Mr. Watson: I am aware of that. I guess we better leave the subject. Everybody has his own imagination about where the storage fields run and some people think they are the size of their farm and they go down deep. The guy a mile away thinks they are three feet high and they spread right out and there is as much under his farm as there is under the next one. It does create problems.



Mr. Rotenberg: If somebody drills on farm A and finds gas and the pocket is spread out and some of the storage area goes under farm B, does farmer B have any say as to what happens to the gas or is it just where the well is? Does farmer B get royalties as well? Obviously the gas pocket doesn't stop at the farm boundaries.

Mr. Treadgold: If you are talking of storage area, everybody in the storage area gets compensation. In fact, the company usually works out a formula and it has what is known as the participating acres--the land where the gas is. The non-participating acres are the area outside theoretically where that gas is.

Mr. Rotenberg: It doesn't really matter where the actually drill hole goes down; it's where the field is.

Mr. Watson: Not everybody agrees with the shape of the field; that's the problem.

I would like to deal with pipeline construction--there have been some problems over the years--and your involvement overall in a new pipeline. I understand that you give the authority to build and so forth, but the arguments that have faced the local politicians guess have been the construction techniques--the way that it is done, the time of year that it is done, the crop damage that is done, and that area. What parts of pipeline construction do you authorize or control?

Mr. Clendining: We are dealing now with oil and gas pipelines. I would like to speak in that context and I assume that what you are speaking about anyway are pipelines for the transmission of gas or oil.

Mr. Watson: I'm think of the biggies rather than the ones up and down the street.

Mr. Clendining: But you are not speaking of water?

Mr. Watson: No.

Mr. Clendining: That's the Ministry of the Environment. You mean the pipelines that go across country.

Mr. Watson: The gas ones have been the ones that seem to have raised the ire of a few people.

Mr. Hodgson: You have no hydro lines down there, eh?

Mr. Clendining: First, there are two jurisdictions, two types of pipelines being constructed across the province. One is under federal jurisdiction and one type is under our--Ontario Energy Board--jurisdiction. Those under federal jurisdiction are such pipelines as TransCanada PipeLines, which is a federally regulated company, Interprovincial Pipe Line and Trans-Northern, to name three in the area.

Then there are the Ontario ones, which would be Union Gas building a line across southwestern Ontario, or Consumer's or any of the local Ontario distributors.

In the case of those under the Ontario Energy Board, the board controls or regulates the entire process, whether the line is even required and, if it is in the public interest, the routing of it. I don't mean we sit down and say, "Bring it up here," and so on, but we approve the proposed routing or perhaps recommend an alternative routing if there are environmental or agricultural reasons for it.

Mr. Watson: Can we deal with that a little bit? That's one of the points with which I want to deal.

Mr. Clendining: May I just finish the rest for completeness?

When approving the construction, we will attach conditions of construction methodology relating to agriculture or the natural resources--the environmental aspects. Finally, we will attach conditions as to completion and land restoration. We try to progress it right through the entire stage. Is it needed and, if it is, you build it but we want to have it done in a certain way.

In the federal jurisdiction, we have a great deal of rapport, input, relationships with the federally regulated companies. This is a project the Ontario pipeline co-ordination committee has been working on for some years. That is a very long name for a group that we have created of ministries which are involved. Environment, Natural Resources, Consumer and Commercial Relations and Agriculture and Food are the key ones.

11:40 a.m.

This committee not only advises the companies applying to the Ontario Energy Board as to what the requirements will be in terms of routing, construction techniques and land restoration. but it has now reached a stature where those companies under federal National Energy Board jurisdiction come to this committee.

They do not seek approval because legally it is unnecessary, but they, in effect, work closely with this committee so that we are actually involved in those as well. Ultimately, if things are not the way we feel they should be, we, the Ontario government, will appear before the National Energy Board for certain adjustments. I am trying to give you an overview. I know you have a specific area of concern.

Mr. Watson: I do not want to zero in on any one specific issue, but we have had a couple of high settlements for people who did not follow the instructions of somebody. I am thinking of the one, if you want to get specific, the one at Lucan. Was that a federal authority or was that your authority?

Mr. Clendining: Was that Interprovincial? Could I ask Doug Cochran to come forward? He is chairman of the Ontario pipeline co-ordination committee and he reports to me. I do keep in close touch with this operation. Are you speaking to that?

Mr. Cochran: I am sorry. I am not sure I caught the area that you were identifying.



Mr. Clendining: May I just introduce Doug Cochran? He has been with the board for many years. He is special projects officer and he reports to me. For some time he has been chairing the Ontario pipeline co-ordination committee which, as I mentioned, involves other ministries. It is a ticklish thing to stick-handle. He has done an excellent job and he and I work closely on this, but I would like him here if we are going to discuss it. I think you are speaking of a settlement with Interprovincial Pipelines versus Peter Lewington.

Mr. Watson: That has been the flagship but that is not--

Mr. Clendining: That was federal; that was the National Energy Board.

Mr. Watson: We will not pursue that, but if that were a provincial situation, if you are going to put a pipe across a farm, it is going to have the same effects whether it is Union Gas or Consumers' or Interprovincial--or a waterline, I guess, as far as that goes.

What is the policing action? Is it your committee that is going to police it. Is it the responsibility of the authority that approves the pipeline to police it? In other words, if it is a natural gas pipeline where you have given authority, you do it; if it is a pipeline that comes under Environment, they do it. How is the policing done?

Mr. Cochran: Essentially, yes. The process is very comprehensive because we work in the free application period to make sure there has been an adequate environmental analysis done, not only in the route selection, but when the route has been finally selected, what are the specific sites' impacts on various resources, agriculture, soil, rivers and so on?

The way the board has handled this is that the hearing date for an application is not set until the environmental report has been completed and reviewed by the various ministries which participate through the committee. Then, if there are any outstanding details, these can be brought up in the course of the hearing, and the board will resolve those. As a result of this process, a lot of the concerns, not only of ministries but also of the Ontario Federation of Agriculture and land owner groups, will be identified. Frequently, these will be resolved before the application is actually heard.

It is still necessary to make sure that the commitments, or recommendations, that have been identified in the environmental analysis process are implemented; so the committee does make recommendations to the board that, in the event that they approve the application, there will be specific conditions identified that have to be implemented.

The committee does do construction monitoring, not necessarily full-time inspection, but certainly inspection during the more sensitive stages of construction, cleanup and restoration. The committee is informal, but the local people, the regional and district people of the Ministry of Natural Resources, the Ministry

of the Environment and even the Ministry of Agriculture and Food--and in this respect I am thinking more of the local federations--are kept informed of the progress of construction and are in a position to monitor.

One of the important conditions that has been implemented is a monitoring report, which requires that the proponent or the pipeline company give a full accounting of the construction that has taken place, the mitigative measures that have been implemented, the restoration work that has been done and, in the event that there have been difficulties, then these are explained at this point. If there are outstanding problems, say with land owners who may be dissatisfied, these are identified.

It is a comprehensive program. Parts of it are formal--that is, the Ontario Energy Board hearing process--and other parts of it are more informal. It is an interministerial liaison and co-ordinative effort.

Mr. Watson: I understand and I appreciate the fact that it goes on, but who has the teeth at the end? We could solve all the problems by just talking to these people, and I will admit that things are an awful lot better than they used to be, but there is the odd one that does not get resolved. Who has the teeth to put the bite in? Is it your board, or is it the Ministry of the Environment? Where is that final power--if I can use that word--when friendly persuasion does not work?

Mr. Cochran: I assume you are not talking about remuneration, say, for crop loss; is this what you are talking about?

Mr. Watson: That can be part of it. Or it can be people who have constructed pipelines in the past, and as long as they got the thing to look sort of level, there was no consideration of the fact that you had all kinds of stones two inches below the ground, and junk and everything else buried there.

The big one that I am involved with is mucking up the tile drainage system for a farmer which, unfortunately, I am a bit cynical about because some engineers from engineering companies in Toronto do not seem to understand how a tile drainage system works in a farm field. It does not work the same as a sewer down Yonge Street.

11:50 a.m.

Mr. Cochran: Tile drainage is one area that we have stressed, and the inspector that we have used for construction in the farm lands in southwestern Ontario is a farmer himself and knows the problems. I think he has been reasonably successful.

Mr. Watson: I know that and I know that the companies there have gone out and said to the federation: "Look, who do you want on here as an inspector? We will pay somebody of your choice to be there every day and watch to see that it is done right." More power to them, that is a good public relations effort. I commend them for it. It has gone a long way to solving a lot of problems.



What I am after today is, where is the authority at the end of this for the odd case you cannot settle? Do you or the Ministry of the Environment have it? Who has that?

Mr. Cochran: We do not have it when it comes to remuneration; that goes to another board. What we have tried to do is, where subsequent applications come before the board by the same applicant, who has just finished a section of a looping, say, then at that hearing, he will be required to give a full accounting of what has happened on the previous job. The province has been involved and the public relations aspect, and then this will be applied to the current application to make sure this does not happen again.

Mr. Clendining: May I just add something, assuming that I understand your question and your frustration? And thank you for the comment that things have improved; we have worked very hard at it. That is a throw-away line, but I am glad to hear that you see things improving.

Mr. Watson: Somebody there of somebody else's choice is watching over what--

Mr. Clendining: We do inspections as well, speaking of Ontario jurisdictions very simply for the moment. This is something that has been in progress for about three years, and there are some incidents away back which are regrettable.

Mr. Watson: They still come up.

Mr. Clendining: We are trying to control the situation now. The instance that you mention, I think, is Peter Lewington versus Interprovincial. That went back many years ago.

The Ontario Energy Board, when it issues its order certifying and approving the construction, adds conditions. If the company does not comply--I will admit there is a subjective judgement in there; I will interject for my friend Mr. Treadgold to stop me if, from a legal point of view, I am not absolutely correct--the condition of the order was that these things would be done, and if they were not done, then the order, in effect, can be rescinded. The work can be stopped and the problem must be corrected before it can continue. That is the ideal.

I realize that some of the drain tile problems that occur have happened and you hear about them later. You try to go back and correct them. Whether we have the legal authority to instruct the company to go back and dig up and replace, Mr. Treadgold can advise me on, but certainly we have the clout. I do not know of any recent cases where they have not gone back to do something that, in our view, has not been done properly in accordance with the conditions.

I am trying to say, yes, we do not some authority in this. We are assuming authority, and we seem to be making it work. Is that relating to your question?

Mr. Watson: From my standpoint, I am glad that you are working on it and are continuing to work on it because, as you

brought up in your last statement, the very point that happens from a practical point is that it may be two years from the time that a pipeline is put in until the problem emerges. You have a tile system which is done one year, and the next year may be a dry spring. And the next year, all of a sudden you have these big two or three acres that did not drain and you do not know why. There have been some bad problems in the past where the fellow said: "We are all finished with that. You should have complained a year ago."

Mr. Clendining: I think we are more involved now.

Mr. Watson: If you do not have the clout to go back and make people fix these, then you should have the clout. I appreciate that the companies now seem to be making a better public relations effort on their own to make sure that this does not happen.

Mr. Clendining: Personally I think we do have the clout. I am not sure that in court we do, and Mr. Treadgold will stop me if I am speaking out of turn.

Again, the condition of the approval was that they would do all of these things. If it turns out after the fact they did not, you can say: "What are you going to do? The line is built. You are not going to say they cannot use it." Then our clout is in saying, "Okay, go back, dig it up and repair it because you must meet that condition of the order."

We have not had an incident that I am aware of where they have refused since we have attached these conditions to the order, which is only the last two or three years. Before that, I know there were some problems. We had some jurisdictional disputes with one company who said: "It is too late. You did not tell us to do it." I am being a little unkind but that is the way it came through to me.

Mr. Watson: It came through out there that way, too.

Mr. Clendining: The land owner in this case finally said he was satisfied; so we put it aside. But now we are more deeply involved. I think we have the clout to order them to go back and dig it up.

Mr. Chairman: Do you have the same expropriation authority that a government agency would have, for example, for highways?

Mr. Clendining: We have the authority to order expropriation in the case of a pipeline construction, yes.

Mr. Chairman: It has to go through you.

Mr. Clendining: Yes. First, the need for and so on has to be approved. Then in the process of building it, if expropriation becomes an issue, then it is brought to the Ontario Energy Board.

Mr. Robinson: I think my question has been asked, so I will pass for now.



Mr. Chairman: Any other questions at this time?

Mr. Edighoffer: I was just wondering a little bit about Ontario Hydro. You stated in your opening remarks that you only had the right to advise on bulk rates to utilities. Is that correct?

Mr. Clendining: Yes, the rate that Ontario Hydro charges for electricity sold to the municipal distributors and a few bulk or large industrial customers. But essentially it is the municipal distribution systems in the province.

Mr. Edighoffer: You have no control over what Ontario Hydro charges its own individual customers such as rural customers?

Mr. Clendining: No, we do not have a direct authority over that. That is, of course, to some extent a fallout of the other. There was a recent change in government policy on that. We do not set the rural rate. Is that correct, Doug?

Mr. Cochran: The end user rate; that is correct. We set the rate that it costs, or shall we say, the rural retail system pays Ontario Hydro for the bulk power, but the retail rates, no.

Mr. Clendining: Oh, you mean at the retail level; I am sorry. We do not, no.

Mr. Edighoffer: You do not in any way. Okay. Just back to regular pipelines, I suppose I am referring to an extension of service. There are many communities that want to be served by gas. Do you have any authority to advise a gas company that they must serve an area?

Mr. Clendining: No. I am not comfortable with the answer, but the answer is that we do not have the authority to instruct them to serve an area. The evolution has been that they have wanted to serve areas for the obvious reason of expanding their business, and they have constantly monitored areas adjacent to the system so as to decide when it is economic to connect. Then they apply to us, and after a hearing either they receive approval or do not. But normally when they apply they receive approval. But for us to say, "We would like them to connect community A," no, we do not have that authority, as such.

12 noon

One of the problems in connecting uneconomic areas--uneconomically connecting areas, is a better way of putting it--is of course that it puts a strain on the other customers, who in effect--and I am telling you the obvious--end up subsidizing an uneconomic extension. So the process has been that the company applies to us to expand. We do not direct it to expand into a new area. Is that your question? My legal adviser has left; so I can relax now.

Mr. Eichmanis: Supplementary to that, do you have situations where a company wants to contract an area?

Mr. Clendining: I am sorry?

Mr. Eichmanis: Where it wants to get out of where it has already expanded?

Mr. Clendining: It wants to abandon?

Mr. Eichmanis: Yes, it wants to abandon an area. What jurisdiction do you have over that?

Mr. Clendining: If a company wishes to withdraw a service, or for that matter go out of business, it is required to receive our approval. In the case of going out of business, obviously if it is a bankruptcy, it is a rather academic thing. But in terms of cancelling service, taking whole systems out of service because they are perhaps dangerous, uneconomic or both, they have to get the board's permission. There were some applications to that effect about two to two and a half years ago by Union Gas. I have forgotten the area, but it was in southwestern Ontario.

Mr. Eichmanis: You have the power to decide whether they should abandon or whether they should not?

Mr. Clendining: We have the power to approve the abandonment, or to disapprove and to say continue to operate, yes.

Mr. Chairman: What would happen in a small company--for example, Wellandport--in the unlikely situation that they would get into financial trouble and, because of that, would want to abandon a line? What is your situation there? You do not have too much choice, but at the same time you have the customers to worry about.

Mr. Clendining: The process would be the same, an application and hearing. I do not like to be cute by saying I do not want to prejudge, but I would have concerns with a system such as Wellandport, or, quite frankly, Natural Resource Gas, which was formerly in Medina, because there are customers who had no alternative supply.

I think if the board decided to approve a shutdown, it would certainly time it to occur in the summer and with adequate warning, and require that some alternatives be made available to the extent that the company can afford it. In the example you use, I have some personal worries. I just do not know how we would handle it.

Mr. Chairman: Would you go so far as to recommend another company, a larger, more solvent company taking over that particular area, that franchise?

Mr. Clendining: That, again, is an authority we lack. In the event of the situation you describe or the one I referred to, it would be very comforting to think we had that authority. But, in the interests of the customers, in the long run I guess the bottom line is, if it is entirely uneconomic, that means all of the existing customers have to pay a little more to cover that takeover area. It is a matter of concern to us and a personal concern to me.

Mr. Charlton: As an extension of that area of discussion, if a company made an application to you to abandon an area of



service, and the application was on the basis that the line was very old and perhaps dangerous, would your power extend to the authority to say no to that company and to direct them to renew that system?

Mr. Clendining: To revitalize that system?

Mr. Charlton: Yes.

Mr. Clendining: Yes. Part of the evidence would be what does it cost to revitalize it.

Mr. Charlton: Taking all of the information into consideration, you would have the power to order them to renew it, to revitalize it, if your finding was that that was feasible?

Mr. Clendining: I think you have just hit the word. Mr. Treadgold is pointing out a subtlety that is very important. We couldn't order them, he points out, to spend the money and reinstate it, but we could refuse to allow them to close it; then if it were a hazardous system, the fuel safety branch of the Ministry of Consumer and Commercial Relations, we assume (inaudible), would move in and say: "Now, you must do this, this and this," which would have the same result, I think. It's a subtle way of saying it.

Mr. Breaugh: I have a couple of points I'd like to raise. Why is that, for example, while I'm here today Consumers' Gas could go to my house and shut off the gas, and when I get home tonight at seven o'clock I wouldn't be able to get anybody to turn it back on until tomorrow at nine o'clock, and that would depend on my having the ability to go to their offices? How can a gas company do that? And why isn't there a requirement that they provide you with proper notice and some kind of mechanism whereby, when I phone them up tonight, I get more than an answering service or some maintenance guy? Why is that?

Mr. Chairman: Don't they have to provide notice?

Mr. Clendining: Well, you had a whole list of things there. There is a requirement that they provide you with notice.

Mr. Breaugh: Is that your requirement or theirs?

Mr. Clendining: It's a requirement that I believe is under the public utilities, but it's a legal requirement.

Mr. Chairman: Is it the Public Utilities Act?

Mr. Clendining: Regardless, it is a legal requirement, yes.

Mr. Breaugh: So, answer my question: How come they can do that and I can't get hold of them?

Mr. Clendining: I can't answer your question because I don't think--I don't know why you can't get hold of them. They're supposed to have--

Mr. Breaugh: Because there's nobody there; that's why I can't get hold of them.

Mr. Clendining: If we're getting down to specific complaints, I would love to look into it and give you an answer, which I will do.

Mr. Breaugh: Okay. Let's be specific. On several occasions I have had constituents call, usually around midnight when they get home, on Friday, and they say: "For some reason Consumers' "--or whatever gas company; it just happens that Consumers' serves my area--"came here and shut the gas off today." They have called Consumers' three or four times in the course of the evening and they have gotten an answering service. Eventually they'll get a maintenance man who says: "Well, it's not within my jurisdiction to reconnect your service. Call the office at nine tomorrow morning."

After the guy does this two or three times, he finally calls me. I call them. I get an answering service in the first place; then, secondly, I get some maintenance guy. He says: "Well now, if there's a problem out there I can go and fix it, but I can't reconnect because that can only be done during business hours."

It strikes me that there are three or four little problems in there. First of all, it's my understanding that Consumers' and other gas companies make it a practice to provide notice. Sometimes people get those notices; sometimes they do not. But the fact remains that they can and do discontinue service.

It strikes me, too, that there is a logistics problem here, and that many people, like me, don't get home until six or seven o'clock in the evening, and if that office is closed and there is a dispute over whether my cheque bounced or I didn't get the notice or I didn't pay or whatever, in effect I have to wait until the next business day and then make an appearance at their office and follow their company practice about sorting out this dispute.

But it remains true that they can and do shut off the service, and I have to wait overnight--and in the middle of winter that is not very pleasant--to go in the next morning to their offices at their pleasure and follow their rules and try to sort it out then. Should there not be a requirement to provide that and to give, by registered letter or whatever, proper notice, and shouldn't that be a concern of yours?

Mr. Clendining: It is a concern of ours, and there is a requirement that notice be served before cutoff, a discontinuance of service notice. Actually, the companies have a sequence of them: you know, three days, 48 hours and ultimately short-term. But it must be served, delivered, in some way substantiated that it was delivered personally and not left with a third party.

You make reference to this happening in the middle of winter. To the best of my recollection of the law, and I'll ask Mr. Treadgold if we go deeper, this mustn't occur or is contrary to the law during the winter.



As to the company's not having someone there to respond at night, I think if that has happened then it's bad public relations on their part, and I'd like some more specific instances.

In my experience--and I have seen one side; I get complaints like that, and I do personally spend a large percentage of not my day but my month in this sort of thing--in many cases I find that there was a notice--and I'm not disputing what you are saying--but there was a notice and perhaps the person did not react as he should have. It's usually nonpayment or alleged nonpayment. I concede that. I, like everyone else, have been accused of not paying a bill.

12:10 p.m.

Mr. Chairman: Especially when there's a mail strike.

Mr. Clendining: Especially when there's a mail strike.

Mr. Chairman: You can go on holidays for a couple of weeks.

Mr. Rotenberg: I would like a clarification on this. If a person hasn't paid his bill and receives a second notice, then a final notice and a disconnect notice and he still has not paid his bill, and if it's wintertime, do you think even after all those steps have gone through the gas company still cannot disconnect in wintertime?

Mr. Breaugh: Well, they do. I don't know whether they can or they can't; all I know is that they do it.

Mr. Chairman: Sometimes they offer you a floor heater, though, for overnight.

Mr. Breaugh: Or they offer to set fire to your building.

Mr. Clendining: Legally, some guidelines were suggested by the Minister of Energy some years ago, which proposed, among other things, that they shouldn't be shut off at least during the cold weather in winter. However, legally they are entitled to shut off service for a legitimate reason.

Mr. Breaugh: But that's my difficulty with this whole process. I wouldn't even mind it if I had the ability to intervene and find someone with the authority to tell the serviceman to go out there and hook it up for tonight and tomorrow morning we'll all go over to their offices and sort out the mess. But I'm caught with a (inaudible) stall here. The reason I can't argue it out with Consumers' in this instance is that there simply isn't anybody there. It's a wonderful technique, because you can't have a one-sided argument with an answering service.

But shouldn't there be a requirement on the part of your board--for example, when you give out these regulatory functions and the licence to operate--that part of that ought to be an obligation that there be some reasonable means of settling a

dispute of this nature?

If I'm working on the line at General Motors and I get home, say, after five o'clock in the afternoon and the gas company has shut it off, I would do without heat for the remainder of that evening, which may or may not be a lot of hardship, depending on what the weather is like.

Secondly, I'm expected the next day to explain to General Motors of Canada that the reason I didn't show up for the seven o'clock shift this morning was that I had to pedal over to Consumers' Gas and sort out an argument there. So I get hit with that penalty.

I assert to you that that's not reasonable and that we should have some mechanism other than the practices of the corporations to resolve it.

Mr. Rotenberg: Except that you had lots of notice of what was going to happen if you didn't pay your bill. You've had proper notice.

Mr. Breaugh: That sounds wonderful, except there are occasions when you do not get lots of notices and there are occasions when you do not get any notice at all. Now, from the company's point of view, they feel they have bent over backwards, obviously; but from the individual's point of view he has been maligned. And I'm not speaking to whether he is a good credit risk or whatever.

It strikes me that when one of our agencies lets these people operate, it's not too difficult a requirement to put on them that they provide a reasonable means of solving problems like that.

Mr. Clendining: I agree with you entirely.

Mr. Breaugh: So why don't you do it?

Mr. Clendining: Well, you're giving me an instance that hadn't come up before, and we're working with them and suggesting ways that they improve--"suggesting," "instructing," whatever words you wish.

But one thing that does concern me, which you set aside and which I do think is part of the issue, is that for whatever reason, whether it is nonpayment, which is probably the reason, if notice has been served, this person has not reacted to it and has not gone in at his own convenience--if he's working a night shift and has to go in in the morning--and made arrangements or sent the cheque or whatever is necessary.

I'm not defending the companies. I'm just saying there has got to be a balance to this complaint you have. If there was no notice, then there's absolutely no excuse for it to happen. This is the type of complaint that comes to me, it's handled immediately and I know of no instances where there hasn't been a record that there was a service of notice of cutoff. I'm not saying there aren't some I haven't heard about. In every one I have checked it



has been substantiated.

I would like to deal with Consumers' Gas, if that is who it is, because I agree with you that it's not fair that a person who works a particular shift should have disadvantages with respect to another person. But at the same time I feel there's a responsibility that if I receive a disconnect notice I don't put it aside; I start working on it right away, not after the cutoff. So I think there's a shared responsibility. I'm not defending the company, and I would like the opportunity to pursue it.

Mr. Breaugh: I don't deny any of what you said. I suspect that many of the people who have called me in that kind of situation probably got a notice and probably ignored it, maybe for a valid reason, maybe not for a valid reason. But when it gets right down to it you are giving those companies the potential for substantial profit and for exclusive rights to a given area.

It strikes me that it's not unreasonable, then, to put some regulations in place which in normal business practices wouldn't be acceptable but in these instances where you are virtually giving them a monopoly on providing service to a given area are not unreasonable and wouldn't be abused to that great an extent, to say that in this particular instance we are going to bend over backwards for the consumer as opposed to the company.

I'm sure I can only recall that happening maybe about once a year. So out of I don't know how many thousands of people Consumers' serves in my area, maybe one or two would get themselves into a situation like this.

Mr. Rotenberg: Does the hydro commission have the same? Do they have somebody on all night in case your hydro got cut off when you came home?

Mr. Breaugh: I must say that with the Oshawa public utilities commission, where I've also had similar kinds of situations, I have always been able to get someone. Someone is on call during the evening hours so that, if there is a problem like this, a discontinuation of service, there is at least someone available to hear the argument. It strikes me that this is not an unreasonable request to put on the gas company.

Mr. Rotenberg: But you wouldn't want them to pay someone full-time to sit there every night just in case--

Mr. Breaugh: They don't pay anybody full-time. They simply have somebody available who will--

Mr. Rotenberg: So when you say the gas company, you don't expect to have an employee sitting there. You just have to have an emergency number somewhere where the answering service can get hold of someone if there is an emergency situation, someone with just a little bit of authority. That's what you want.

Mr. Breaugh: All I'm saying is that if there were a disruption of a gas line, if there were an explosion, I am sure Consumers' has a backup system so its staff can be there. I'm also

equally sure that if they really wanted to they could have someone who could at least hear and resolve this kind of complaint as well.

Mr. Chairman: Mike, as you were told, I assume there have been a number of notices given by the gas company to that customer, and there was a warning about disconnection and then it happened. I just can't see how, at five or six or seven o'clock at night, you can call somebody who has the power to revoke that disconnect. I think it would be very difficult to do that. You may be talking to the same person who turned it off at three o'clock.

I would think the answer in a situation like that would be that, say, between December 1 and April 1 the company would have to collect its bill by way of a claim in the small claims court or something and use the normal process that most retailers have to use. Then if there's a judgement and they don't pay it, there is a disconnect or something like that.

But I just can't see somebody who happens to be on duty at nine or 10 o'clock at night sort of changing government policy or getting into an argument about whether the bill was paid or whether a notice was received. That's just too complicated for that poor fellow, particularly if he has listened to Foster Hewitt or something on the radio.

Mr. Breugh: Oh, I'll accept, George, that if PUC can do it, I don't see why Consumers' Gas can't do the same.

Mr. Chairman: You mean you can call somebody at the PUC at night and he can say: "Okay, I'll turn it on, but you get down here in the morning"?

Mr. Breugh: Yes. I can find someone with the authority to revoke a stop-service order at the PUC. I could find the same thing with the individual oil suppliers in my area.

Mr. Chairman: But that's because it's you. That's because a customer was fortunate enough to get hold of you and then you go to bat for him. That's a little different, maybe.

Mr. Breugh: All I'm asking is why Consumers' Gas cannot run it exactly the same way as the private sector and the public sector in the same community. It strikes me as being not unreasonable, because these guys give to Consumers' Gas in my area the sole right to operate.

If you want to open it up and say we will have three gas companies out there and we will see who adopts a company policy that provides continuous service and a reasonable means of resolving disputes, I would be happy as hell to do that. But when that is the only game in town and they write their own rules, I think there is an obligation on their part to have extremely good rules.

12:20 p.m.

Mr. Rotenberg: I agree there should be good rules but on the other hand, as the chairman said, there has to be a little bit



of balance in this. A person cannot be a deadbeat and get all the notice, and so on, and then when the crunch comes finally expect everybody to jump when he says to jump.

Mr. Hodgson: All Mr. Breaugh is saying is that if he has one of his constituents phoned him with a problem, Mr. Breaugh has nobody to phone if it is after five or six o'clock at night, until the next morning when they open up, or on the weekend you have two days that you cannot contact anybody at all. That is all he is asking for, the same as Hydro. Hydro has a certain number and there will be somebody come on. They are not full-time employees, they are people who have the responsibility to answer that phone and direct the complaint to where it should go.

Mr. Rotenberg: That is for emergencies.

Mr. Hodgson: This is an emergency. My God, what kind of an emergency could be more serious if it were shut off?

Mr. Breaugh: If I bought something at a store and I neglected payment or, for whatever reason, the store was not happy with getting their money, would you also think it a reasonable thing that the store could come to my house in my absence and take that stuff away again?

Mr. Rotenberg: No, but they could stop delivery of the second shipment.

Mr. Breaugh: They could do a lot of things. I am uneasy that they could conduct a raid in my absence and seize something.

Mr. Rotenberg: They are not supplying you with anything more. Your analogy, with respect, is incorrect. They are not giving you any more supplies, they are not selling you any more, because you did not pay for the previous shipment. That is what they are doing.

Mr. Breaugh: That is what the argument was about.

Mr. Rotenberg: They are not taking anything away from you that you already paid for or already bought.

Mr. Chairman: I would leave it with the chairman, Mr. Clendinning, to look into that and see whether in fact the board has the power, or would like to have the power, to control and improve that situation to some extent.

Mr. Breaugh: Basically, what I am talking about is that if you grant the licence for them to operate, there be a requirement to provide continuous service and a means to resolve this kind of a dispute. It strikes me that is not an unreasonable request.

Mr. Rotenberg: Having said what I said, the other side of the coin, being the devil's advocate, I still think you are correct, there should be some means of resolving the dispute. That doesn't actually mean someone getting his gas turned on without making the payment.

Mr. Epp: I think, in fairness, my experience with Union Gas has been that they have a number in Preston, and I live in Waterloo, and we were able to resolve a problem somewhat similar to what Mr. Breaugh refers to.

My particular point is that there may be some consumer companies that have this service, where people are in a position where they can make important decisions, and there may be other companies that do not have that, or their companies might have those decision-making powers in some parts of the province and not in other parts of the province.

This is something you could look into. Maybe in Toronto they would have that particlar service, and maybe in Oshawa they do not. I do not know, but it is something that may not be uniform across the province, either with companies or between companies.

Mr. Clendining: We are involved with the gas companies in what we call quality of service, which covers all of these things. This particular problem has not arisen before. I am personally interested in this area. I will look into it and, hopefully, resolve it. Do you wish to have a report on it?

Mr. Breaugh: Yes, I would be pleased to. It is my understanding that these things are all policies which are set by an individual company. I am not suggesting that Consumers' Gas or anybody else break the law here. I am just suggesting they have a business practice which I would find a little harsh.

To be reasonable about it, too, I would suggest probably most of the time, when somebody calls me at eight or nine o'clock in the evening they do not give me the whole truth about their personal circumstances. I want to set that aside for a minute and say that what strikes me as reasonable is some mechanism to resolve that does not involve shutting off the service first and then seeing what we can do the next day.

Mr. Rotenberg: The problem is, he did not call you until the service got shut off. He did not call you when he got his final notice, he did not call you when he got his first notice, he did not call you when they said they were going to shut the gas off tomorrow if he did not pay today. Someone may come knocking at your door and say, "We are coming now to shut off your gas." The wife is there but she does not phone her husband or phone you then to resolve it; she waits until the husband comes home at eight o'clock at night.

Mr. Hodgson: There may be a shotgun at the door, too.

Mr. Rotenberg: In view of what you are saying, I do not think it is all a black and white situation. I think you have to be fair to the company too. You cannot have a maintenance man standing by to reconnect just because somebody calls an MPP.

Mr. Breaugh: The maintenance man was there. You do not know what you are talking about. You have no problems in Forest Hill.



Mr. Chairman: Any other questions of Mr. Clendining? I just have one, really supplementary to Mr. Edighoffer's comments regarding rate setting involving Ontario Hydro. Do you feel you should have the same powers as far as regulating Hydro's rates are concerned as you do with gas companies?

Mr. Clendining: No, sir.

Mr. Chairman: Why?

Mr. Clendining: I feel in one way it would be a redundancy in the sense that one government agency would be overlooking another government agency, and I use the term loosely with regard to Ontario Hydro. Ontario Hydro has a responsible board of directors who are appointed and who have the responsibility of making the capital expenditure decisions in the same manner as any other private corporation.

I feel it would be a redundancy to place on top of that another group which checked the other group that was making the decisions. To me it would be wasteful. It would be a long process and--this is a subjective thing; I am not defending Ontario Hydro--I do not think it would improve the corporate decision-making processes of Ontario Hydro or of any corporation that is constituted in that manner.

Mr. Chairman: I think, though, the fact that you do not have that power would affect the policy of Ontario Hydro. As you know, they have a long-term expansion policy. They acquire property and build generating stations in anticipation of future need. They build up, shall we say, their excess capacity based on future need or some form of export policy. Sometimes they build generating stations they do not need and things of that nature.

Mr. Breaugh: Sometimes they build them and they do not need them.

Mr. Chairman: Right. Their margin of around 20 per cent of capacity over real need seems to be sort of an accepted policy. You do go so far as to recommend a certain rate and sometimes they accept it and sometimes they do not, although I must admit that most times they do. Then there are certain problems they were involved in as far as uranium was concerned and the cost of uranium. I just feel that if you had that power, as a second stage or as a watchdog, it may be beneficial to Hydro's customers in the long run.

There is no question that Hydro gets its money from what it collects from its customers. When they know there is no real final inhibition on what they charge, sometimes there is a great deal of experimentation. I am not saying Hydro is not a well-run corporation, by any means, but it seems ludicrous that you can go so far and not the final stage. Another point is that Hydro is more and more becoming competitive with other forms of energy.

Mr. Clendining: I appreciate what you are saying and I am only reacting from where I sit and from my experience, which is

different. Hydro is certainly influenced by the government of Ontario.

Mr. Breaugh: Marginally.

Mr. Epp: It has never been noticeable.

Mr. Chairman: It is almost in-house from that point of view.

Mr. Epp: Hydro would take exception to that statement.

12:30 p.m.

Mr. Clendining: I said, "influenced," but at any rate I was not trying to be cute. I just feel Ontario Hydro has responsibilities which differ from those of the gas utilities. The gas utilities have a monopoly and their--I used the word "profits" recently--

Mr. Rotenberg: Private enterprise.

Mr. Clendining: Their revenues are controlled. They are only supposed to do things that are economic, if you wish. We were discussing service into unconnected communities. I am being philosophical, and this is not what we are here for, I suppose. But Ontario Hydro has a rather larger mandate, and it is not only in terms of economic development but also in terms of serving the people generally. The rules are different, and for us to put the same rules on them I do not think is appropriate. There could well be a different set of rules. I appreciate that we could do this thing, but it would take a lot of time.

Mr. Chairman: When you consider an application now for a rate increase, you have your hearings, you go through the whole gamut, the same as you do with the private utilities. You recommend a rate increase. The only difference is they do not have to accept your recommendation. I am just suggesting there should be that one further step.

I am sure you take into consideration Ontario Hydro's role as a government utility and the fact it should be used for industrial development, to encourage industrial development and expansion generally, whether it is residential, commercial or industrial.

Mr. Clendining: We do comment, as you know, in our advisory report on Hydro, on matters that are not--well, everything is rate-related, because everything eventually shows up in the cost of the electricity.

I have concerns that, if we were given the same control, for instance, Ontario Hydro would be applying for the right to build a facility. That is a major, very complex subject which they are actually doing in British Columbia now. They are having rather limited success in regulating BC Hydro to that detail.

At any rate, I am giving you a reaction I felt that Ontario Hydro was controlled in a different way and, for that reason, for



us to be superimposed in total would be a great deal of extra expense and delay.

When we recommend a rate change or approve a rate change, we certainly do not go into the same depth of the rate base, because we do not deal with rate base and other facilities that Ontario Hydro has, as we do with the gas companies. It would certainly be a great deal longer hearing process if we did.

Mr. Chairman: I think you should, particularly when we get up around 30 per cent.

Mr. Breaugh: Somebody has to.

Mr. Chairman: Yes. I would rather see you do that than not have the power to immediately implement. I would like to see your recommendation, a real, true, through recommendation based on--

Mr. Clendining: The same with gas utilities.

Mr. Chairman: Oh, sure.

Mr. Clendining: We certainly have the expertise. We would require additional manpower, but that is a minor point.

Mr. Chairman: Because I can see Hydro--and they possibly do that now--saying: "Well, this was a cursory examination. The energy board really did not look into this, that and the other thing." You have to admit that this is true. I would like to see it, whether you require amendments to the legislation or what.

It is the same argument as when I was Minister of Energy and Resources Management and Ontario Hydro was supposed to be part of our ministry. At the same time, there were certain times when the chairman would point out to me: "You have no control. We are an independent commission and autonomous. Although we report through you to the Legislature, hands off." Most unsatisfactory.

Mr. Clendining: I know nothing about those matters.

Mr. Chairman: But, all in all, they are--

Mr. Breaugh: A bad bunch.

Mr. Chairman: No, no. There is great co-operation really. I want that on the record.

Mr. Edighoffer: You said you have had some consultative reports. Have any of your consultants suggested you wasted time in reviewing Ontario Hydro rates?

Mr. Clendining: No, not to my knowledge. Incidentally, just as a matter of interest, the board is in the process of issuing a brochure in layman's language on how a gas utility changes its rates. Unfortunately, it was not ready for today. If things had worked out better, I thought you might find it interesting reading. It is simple. That is what the front page looks like. It does not really help. It is intended for municipal

governments, members of the Legislature and citizens, anyone who really wants to find out how to participate in rate setting.

Everyone, every customer at any rate has a right to participate in hearings and I do not think this is too well known. There is someone watching out. Maybe people do not feel it is being done well enough, but the fact is there is a forum. This brochure will be available in the next week or so. I do not know whether this committee would like copies, but I am sure the minister would be planning to send them to you if that is in order.

Mr. Chairman: The next will be a sequel, Why Do Ontario Utilities Change Their Rates?. Let them do it. That is public relations.

Mr. Hodgson: Mr. Chairman, are you going to have Ontario Hydro up to a hearing like this?

Mr. Chairman: Have them as part of this--

Mr. Hodgson: I was just asking you. I am not telling you what you should do. You were very definite on certain facts and they should hear what you have to say.

Mr. Chairman: We will put them on the list for this spring if you want.

Mr. Hodgson: I would think that would be good.

Mr. Chairman: And Union Gas; then we would get a day of Mr. McKeough.

Mr. Clendining: May I attend that day?

Mr. Chairman: Thank you very much for attending today.

Mr. Clendining: Thank you. It is a pleasure.

Mr. Chairman: We will meet again at two o'clock, gentlemen, in camera, to consider some reports and to try to finalize what we have been doing.

The committee recessed at 12:39 p.m.















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